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case of Austria“

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Hanna Brandner BA

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Univ.-Ass. Dr. Marina Kaspar

To my dad, for his tireless support.

List of Abbreviations

CBPs	Common Basic Principles on Integration
CCPR	Committee on Civil and Political Rights
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Convention on the Protection of All Migrant Workers and Members of Their Families
CFR	Charter of Fundamental Rights of the European Union
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
EFTA	European Free Trade Association
EIF	European Integration Fund
EU	European Union
FRD	Family Reunification Directive
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Social, Cultural and Economic Rights
ICMPD	International Centre for Migration Policy Development
IOM	International Organisation for Migration
LTRD	Long-Term Residents Directive
MIPEX	Migrant Integration Policy Index
NAPI	National Action Plan Integration
NCPI	National Contact Points on Integration
OSCE	Organization for Security and Co-operation in Europe
ÖIF	Austrian Integration Fund
TFEU	Treaty on the Functioning of the European Union

UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

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Introduction

Integration is unavoidably linked to the phenomenon of migration, a global issue that is not going to disappear in the near future. Predictions suggest that there will be an increase of people migrating to Europe in the years to come.¹ How we deal with these newcomers, how we think of managing a society with diverse groups of people, to what degree we expect them to adapt to our way of living? And what rights do we grant them? All these questions are representative to the concept of integration. In the following master's thesis, light will be shed on the concept of integration in relation to human rights.

The methodology for this thesis will be based on a qualitative literature research and review focusing on socio-legal literature and case law by the European Court of Human Rights (hereinafter the Court or ECtHR) and the European Court of Justice (hereinafter ECJ). It will be discussed in a top-down structure how the different organizations and human rights bodies view migrant integration. First starting at the international perspective, with UN bodies, then the regional with the ECtHR, further the European Union (hereinafter EU) and lastly delving into the national perspective by depicting Austria's approach for dealing with integration. The first chapter will set the basis for understanding the broad dimensions and fields that integration encompasses, exploring the concept of integration beyond the sphere of legal studies and outlining its sociological aspects. The next two chapters are further building stones that assist in analyzing integration in the context of a global human rights frame before comparing it in a concrete national case, that is in the case of Austria.

The questions that I will try to answer are: "What are the important human rights that need to be considered and respected in the process of migrant integration?", "In what way do the international, regional and national perspectives on integration harmonize with one another and in what way do they diverge from another?".

For the first chapter, the work of John W. Berry will serve as the main source of first encounter with the concept of integration, discussing the acculturation model. In the second chapter, the core human rights conventions that are relevant for the rights of immigrants as well as the case law of the ECtHR related to integration will be introduced. In the third chapter, the guidelines and soft law of the EU law will be discussed, as well as two Directives

¹ Richard Grieveson, Michael Landesmann, Isilda Mara, *Future Migration Flows to the EU: Adapting Policy to the New Reality in a Managed and Sustainable Way* (2021) Vienna Institute for International Economic Studies, (Policy Reports No. 49), 10-15
<<https://wiiw.ac.at/future-migration-flows-to-the-eu-adapting-policy-to-the-new-reality-in-a-managed-and-sustainable-way-dlp-5808.pdf>> accessed 26 June 2023.

and the case law of the ECJ. Finally, when reaching the national approach of Austria, a brief history of Austria's history of migration and the institutionalization of the topic of migrant integration will be highlighted. Furthermore, one important soft law document that sets guidelines on how to manage migrant integration will be presented before discussing the Austrian Integration Act of 2017. To conclude the fourth chapter, the national approach will be put into perspective by turning again to international dimensions of measuring and comparing migrant integration, that is the Migrant Integration Policy Index (hereinafter MIPEX), and discussing Austria's score within this international comparison.

1. What is Integration?

Before delving into the human rights dimensions and the legal frameworks of migrant integration on an international, regional and national level, it is important to establish a comprehensive understanding for the relevance of this topic as well as a comprehensive understanding of the concept of migrant integration. The first chapter will begin by illustrating that integration is embedded in the broader context of migration. Migration is currently one of the most important tasks that the European Union faces and that is most likely to remain a challenge in the years to come. A short description of the approach taken by the European Union to tackle migration will be provided before addressing the concept of integration and its various dimensions.

1.1. Relevance of Integration and a Migration Outlook

Human migration is an age-old and familiar occurrence in our societies. When considering the global population, the numbers of international migrants are relatively small. According to the United Nations, in 2020, international migrants accounted for approximately 3.6 percent of the world's population, equivalent to 281 million individuals. It is important to note that the majority of people migrate within their own countries and do not move across international borders.² However, the arrival of people in Europe has presented significant challenges in recent years, affecting EU policies concerning asylum, external borders, and migration. The peak of migrants and refugees arriving in Europe in 2015 sparked a reform process aimed at rebuilding the asylum system. This reform is guided by four pillars, each addressing critical aspects of the issue. Firstly, the EU aims to diminish the incentives for irregular migration by combating the underlying causes, while simultaneously enhancing efforts to facilitate returns, dismantle smuggling and trafficking networks, and ensure the security of affected individuals. Secondly, the EU places great emphasis on saving lives and strengthening its external borders. Thirdly, the EU seeks to establish an asylum policy which promotes that its member states fairly share the responsibility. Lastly, the EU recognizes the necessity of providing legal

² International Organization for Migration (IOM), 'World Migration Report 2022', xii
<<https://publications.iom.int/books/world-migration-report-2022>> accessed 27 June 2023.

pathways for individuals seeking asylum, as well as providing legal pathways for regular migrants.³

A study by the Vienna Institute for International Economic Studies of 2021 predicts that people migrating to Europe will increase in the years to come. The persistent wealth gap, as well as factors such as wars, climate change, and future, even more severe environmental challenges, will continue to drive migration towards the EU. The main sending regions of migrants will be Africa and the Middle East.⁴ As future immigrants are projected to come from further away with different cultural, linguistic, and professional backgrounds, the challenges of integration are expected to become more difficult. European countries will have to adapt their migration and integration policies to address these evolving dynamics.⁵

Despite being a vital component of the migration phenomenon, integration often receives poor or fewer attention in the media and in public discourse. Instead, there tends to be a prioritization of the initial reception of migrants.⁶ Since 2016, the European states' overall focus has been on cutting the numbers of arrivals and border control. However, achieving successful integration outcomes does not necessarily require reducing the number of arrivals.⁷ This heightened focus may come from perceiving migration as a potential threat, given that it may bring about societal transformations, including shifts in the ethnocultural composition and increased diversity within communities. Consequently, variations in a country's approach to integration policies may be influenced by its attitude towards diversity, or alternatively, by concerns regarding a change of cultural traditions and values.⁸

³ Joanna Apap, Anja Radjenović, *The migration issue* (European Parliamentary Research Service, 2019), 1+7 <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635542/EPRS_BRI\(2019\)635542_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635542/EPRS_BRI(2019)635542_EN.pdf)> accessed 27 June 2023.

⁴ Richard Grieveson, Michael Landesmann, Isilda Mara, *Future Migration Flows to the EU: Adapting Policy to the New Reality in a Managed and Sustainable Way* (2021) Vienna Institute for International Economic Studies, (Policy Reports No. 49), 9ff <<https://wiiw.ac.at/future-migration-flows-to-the-eu-adapting-policy-to-the-new-reality-in-a-managed-and-sustainable-way-dlp-5808.pdf>> accessed 26 June 2023.

⁵ Ibid, 15.

⁶ Organization for Economic Cooperation and Development (OECD), 'Working Together for Local Integration of Migrants and Refugees' (2018), 3 <<https://www.oecd-ilibrary.org/docserver/9789264085350-en.pdf?expires=1687162765&id=id&accname=guest&checksum=D0C7240D07CF0DBD29944E92AEED472B>> accessed 28 June 2023.

⁷ Council of Europe Commissioner for Human Rights, 'Time for Europe to get migrant integration right', Issue Paper (2016), 9 <<https://rm.coe.int/16806da596>> accessed 26 June 2023.

⁸ Organization for Security and Co-operation in Europe (OSCE), 'Good Practices in Migrant Integration: Trainee's Manual' (2018), OSCE ODIHR Publishing, 24-25 <<https://www.osce.org/files/f/documents/a/2/393554.pdf>> accessed 27 June 2022.

1.2. Definition of Integration

The concept of immigrant integration lacks a legally binding and universal definition. Different organizations or national institutions may offer different definitions.⁹ As exemplified below, these variations in definition arise due to the defining institution and the intended purpose, resulting in differing emphases on various aspects of integration.

To begin with, in the context of migration, the term of integration can be defined as the involvement of migrants in various social spheres. It is the opposite of segregation and exclusion¹⁰. It appears widely agreed that integration is a "two-way process". The International Organization for Migration (hereinafter IOM) defines integration as such a two-way process of "mutual adaptation between migrants and the societies in which they live, whereby migrants are incorporated into the social, economic, cultural and political life of the receiving community." According to the IOM, integration also incorporates "other related notions such as social inclusion and social cohesion".¹¹ Similarly, the Organization for Security and Co-operation in Europe (hereinafter OSCE) defines integration as "a two-way process, involving efforts by the migrants themselves and those in destination host countries".¹² Recently, however, the European Commission has shifted its understanding of integration from a two-way process to a three-way process in which the involved actors are not only the migrants and the host society but also the countries of origin.¹³ This incorporation of the country of origin as a key actor in the integration process highlights the often existing ties between receiving and sending countries. On an individual level these ties represent, for example, activities such as sending remittances and investments in the homeland. On the other hand, sending countries increasingly try to strengthen their ties with emigrant populations by facilitating return and inviting political and economic engagement of emigrants from afar.¹⁴

The Austrian Integration Act of 2017 provides a specific framework that emphasizes the duties and responsibilities of the entities involved in the integration process and is based on

⁹ Ibid.

¹⁰ Sieglinde Rosenberger, Oliver Gruber, *Integration erwünscht? Österreichs Integrationspolitik zwischen Fördern, Fordern und Verhindern* (Czernin Verlag 2020), 8.

¹¹ International Organization for Migration (IOM), 'Glossary on Migration' (2019) No. 34, 106 <https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf> accessed 27 June 2023.

¹² Organization for Security and Co-operation in Europe (OSCE), 'Good Practices in Migrant Integration: Trainee's Manual' (2018), 5 <<https://www.osce.org/files/f/documents/a/2/393554.pdf>> accessed 27 June 2023.

¹³ Blanca Garcés-Masareñas, Rinus Penninx, 'Introduction: Integration as a Three-Way Process Approach?' in Blanca Garcés-Masareñas and Rinus Penninx (eds), *Integration Processes and Policies in Europe* (Springer Open 2016), 1 <https://link.springer.com/content/pdf/10.1007/978-3-319-21674-4_1?pdf=chapter%20toc>.

¹⁴ Ibid, 4+5.

the principle of “promoting and demanding”. It outlines the expected roles and obligations as defined by the law and defines integration in § 2 para. 1 as the following: “Integration is a process involving society as a whole, the success of which depends on the participation of all people living in Austria and is based on personal interaction. Integration requires in particular that immigrants actively participate in this process, take advantage of the integration measures offered and recognise and respect the basic values of a European democratic state.” It continues to say that all government institutions must contribute to a successful integration process by systematically offering integration measures.¹⁵ The Austrian Integration Act does not specify further the societal sub-sectors, such as the job market, social system, educational sector, or political sector, in which immigrants should be integrated.

Having established the dual participation of parties in the integration process, or even triple participation, and their consequential influence on its ultimate outcome, it is crucial to acknowledge that the migrant party itself is not a homogeneous entity. Variations in age, gender, educational backgrounds, beliefs, and other factors require careful consideration for the effective implementation of the integration process.¹⁶ Similarly, the actors involved in the integration process of the destination country cannot be understood as one single entity. Diverse groups of individuals, including politicians, civil servants, non-governmental actors, journalists, and others play a significant role in shaping the integration process.¹⁷

1.3. Acculturation Models

In general, integration policies focus on managing the cultural differences and the social inequality as well as the increased social diversity that arise from two or more groups coming into contact with each other. When integration policies prioritize cultural differences, the focus of policy measures shifts towards facilitating immigrants' adaptation to the traditions and cultural practices of the host country. In contrast, when integration measures adopt a structural orientation, they prioritize the rights and opportunities necessary for enabling immigrants' social, economic, and political participation.¹⁸

¹⁵ Jakob Taubald, ‘Vom Fordern und Fördern im Integrationsgesetz’ in *Juridikum* (2018) Vol. 3, 335 <https://www.juridikum.at/files/ausgaben/juridikum_2018_3_0.pdf> accessed 13 January 2024.

¹⁶ Anthony F. Heath, Silke L. Schneider, ‘Dimensions of Migrant Integration in Western Europe’ in *Frontiers in Sociology* (2021) Vol. 6, 2 <<https://www.frontiersin.org/articles/10.3389/fsoc.2021.510987/full>> accessed 27 June 2023.

¹⁷ Organization for Security and Co-operation in Europe (OSCE), ‘Good Practices in Migrant Integration: Trainee’s Manual’ (2018), 25 <<https://www.osce.org/files/f/documents/a/2/393554.pdf>> accessed 27 June 2023.

¹⁸ Sieglinde Rosenberger, Oliver Gruber, *Integration erwünscht? Österreichs Integrationspolitik zwischen Fördern, Fordern und Verhindern* (Czernin Verlag 2020), 9.

The OSCE describes four types of integration policies, which address the cultural diversity resulting from migration: multiculturalism, assimilation, integration and segregation. The multiculturalism model can be characterized by “equal rights and opportunities for all cultural groups”. The assimilation model represents more or less the opposite of the multiculturalism model. Positioned between multiculturalism and assimilation is the integration model and the segregation model can be characterized by marginalizing migrants.¹⁹

These models as described by the OSCE originate from sociology and are the famous so-called “acculturation strategies” by Berry. Depending on the degree by which an individual participates in the new culture and maintains their original cultural identity, one of the four strategies will be the outcome.²⁰ Examining these strategies can be of value for the later discussion regarding human rights in integration policies, as some of these strategies may already raise concerns about the rights of migrants. Individuals may adopt one of these strategies not voluntarily but are forced to do so due to strict integration policies and legal measures adopted by the host country. Furthermore, understanding the acculturation strategies and how individuals adapt to new cultures can be helpful when later discussing the challenges immigrants face such as alienation that could potentially lead to a higher risk of radicalization. Berry describes acculturation as the following: “a process of cultural and psychological change that results from the continuing contact between people of different cultural backgrounds.”²¹ These cultural contacts would most likely result in the development of culturally plural societies. Two important aspects when studying culturally plural societies is whether the cultural communities can continue to maintain their cultural traditions, identity, etc, or not and whether they can participate in the daily life of the plural society or not. There are two important models of culturally plural societies that incorporate these aspects: the *melting pot* model and the *cultural pluralism* model. The melting pot model is characterized by one mainstream, dominant society with minority groups living on the margins of that dominant society. The idea is that the marginalized groups should be eventually absorbed into the dominant group. They cannot continue to maintain their cultural identity and can only participate in the society if they have been absorbed into the mainstream. In the cultural pluralism model we have a mosaic of different ethnocultural groups incorporated into the larger society in which the ethnocultural groups can continue to maintain their cultural

¹⁹ Organization for Security and Co-operation in Europe (OSCE), ‘Good Practices in Migrant Integration: Trainee’s Manual’ (2018), 24 <<https://www.osce.org/files/f/documents/a/2/393554.pdf>> accessed 27 June 2023.

²⁰ David L. Sam, ‘Acculturation: conceptual background and core components’ in David L Sam and John W. Berry (eds), *The Cambridge Handbook of Acculturation Psychology* (Cambridge University Press 2006), 18 +19.

²¹ John W. Berry, ‘Contexts of acculturation’ in David L Sam and John W. Berry (eds), *The Cambridge Handbook of Acculturation Psychology* (Cambridge University Press 2006), 27.

identity as well as participate in the larger society.²² According to Berry, immigrants and refugees are two different classifications of groups that make up a plural society. He classifies the groups depending on three factors: voluntariness or involuntariness of cultural contact, sedentariness or mobility and thirdly, whether they have settled permanently or temporarily.²³

MOBILITY	VOLUNTARINESS OF CONTACT	
	VOLUNTARY	INVOLUNTARY
SEDENTARY	ETHNOCULTURAL GROUPS	INDIGENOUS PEOPLES
MIGRANT permanent temporary	IMMIGRANTS SOJOURNERS	REFUGEES ASYLUM SEEKERS

Figure 3.2 *Varieties of groups in plural societies*

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Having gained a more sociological perspective of migration and cultural diversity can help for a broader understanding of the concept of integration. In the context of the acculturation strategies, integration occurs when “there is an interest in both maintaining one’s original culture, and having daily interactions with other groups”. Both the aspects mentioned earlier, continuity and maintenance of one's cultural integrity as well as participating in the larger society are positively realized in the case of integration. Berry highlights that integration can only be chosen by an individual or a group if the dominant culture is open towards cultural diversity. According to Berry, there must be a “mutual accommodation” for integration to be achieved that requires that both the dominant and non-dominant group accept the rights of all groups to live out their cultural identity while belonging to one and the same society. This mutual adjustment entails that the non-dominant groups adopt the basic values of the larger society and that the dominant group makes adjustments by adapting national institutions in a way that they better meet the needs of all groups. Furthermore, Berry stresses that the integration strategy can only be achieved in multicultural societies that view cultural diversity as valuable and where minimal racism and discrimination exist. There must be “positive

²² Ibid, 27+28.

²³ Ibid, 29.

²⁴ Ibid, 30.

mutual attitudes” among the different cultural groups and a shared feeling of attachment or identification with the larger society.²⁵

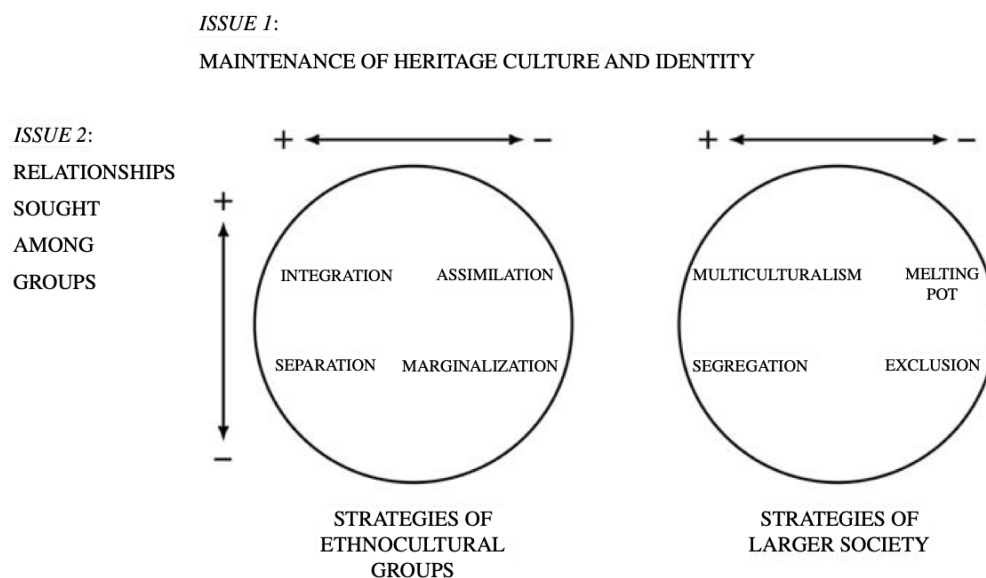


Figure 3.3 *Acculturation strategies in ethnocultural groups and the larger society*

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The left circle depicts acculturation strategies from the perspective of the non-dominant groups. The right circle shows the perspective of the dominant group and their powerful role in acculturation processes. Thus, when for example, separation is enforced by the dominant group, it is called segregation. When marginalization is enforced, it is exclusion and so on.²⁷ Many studies have shown that the preferred strategy for non-dominant groups is indeed integration. However, one of the common exceptions, as demonstrated in a study by Piontkowski et al. in 2000, are Turks in Germany and socio-economic status Turks in Canada. In both these exceptions, the non-dominant group preferred separation over integration.²⁸

On a final note, on acculturation strategies and viewing integration from a more sociological perspective, it must be stated that even in multicultural societies where cultural diversity is accepted, there are variations regarding the acceptance of specific groups. This can lead to a hierarchy of acceptance and that the less accepted groups face rejection and discrimination.²⁹

²⁵ Ibid, 35 + 36.

²⁶ Ibid, 35.

²⁷ Ibid, 36.

²⁸ Ibid, 36+37.

²⁹ John W. Berry, ‘Stress perspectives on acculturation’ in David L Sam and John W. Berry (eds), *The Cambridge Handbook of Acculturation Psychology* (Cambridge University Press 2006), 46.

1.4. Integration Indicators

One of the findings of the previous chapter showed that integration and multiculturalism would be the most favorable strategy to deal with when cultures come into contact. They do not lead to cultural loss, and the risks of discrimination are lower when the rights of all people living as culturally diverse people within one society are respected. The question that consequently arises is how to measure whether integration policies provide for opportunities that lead to integration and enable non-dominant groups to participate in society.

The MIPEX is such a tool that measures integration, created by the Migration Policy Group based in Brussels. It measures integration policies across six continents, including all EU states and many non-EU states, such as Albania, Iceland, Canada, Norway, Serbia, Russia, and Turkey, China, India, Israel, Japan, US, etc. In the latest edition of the MIPEX of 2020 eight policy areas were the focus of the assessment: Labour Market Mobility, Family Reunion, Education, Political Participation, Long-term Residence, Access to Nationality, Anti-discrimination and Health. In the previous edition of the MIPEX of 2015 a total of 167 integration indicators were used for the assessment, while for the edition of 2020 a core set of 58 indicators were selected and used. These indicators evaluate the policies in the eight policy areas and at the same time contribute to the assessment of the three dimensions by which each country is grouped and their overall approach to integration is described. The dimensions are *basic rights*, *equal opportunities* and *secure future*. There are in total ten groups that can be summed up into the following four main categories of groups: comprehensive integration, equality on paper, temporary integration, immigration without integration.³⁰

In the upcoming chapter about Austria's integration policies, the MIPEX will be revisited and the key findings about Austria's score discussed. Already in advance it is noteworthy that in the edition of 2020, Austria scored 46 out of 100 and is sorted into the group of temporary integration with the subcategory halfway unfavorable.³¹

³⁰ Migrant Integration Policy Index 2020 <<https://www.mipex.eu/what-is-mipex>> accessed 27 June 2023.

³¹ Ibid.

2. Human Rights in Migrant Integration: An International Perspective

Having discussed what migrant integration encompasses and having depicted that it is the subject of many different fields of research, Chapter 2 will highlight the human rights dimensions relevant in the integration process. It is important to mention the significance of upholding human rights in the process of migrant integration, as immigrants may face the risk of segregation and exclusion when they come into contact with a new culture and community to which they have migrated to. Exclusion can manifest in various forms, such as for example limitations regarding the access to the labor market, regarding the political participation or the restriction on the freedom of movement.³²

It has been shown that international legal standards may potentially influence national legal frameworks. Moreover, as previously discussed, integration is linked to the phenomenon of migration, which has of course international dimensions.³³ Thus for a more comprehensive understanding, the following chapter will focus on the international standards related to integration before delving into regional standards in a later sub-chapter.

2.1. The United Nations Perspective of Integration

In the context of migration, the 1951 UN Refugee Convention is the most notable international instrument that protects the rights of refugees. It also addresses the rights of refugees during the integration process and is the only international instrument that tackles integration as an objective itself. Furthermore the influence of the International Covenant on Civil and Political Rights (hereinafter ICCPR), the International Covenant on Social, Cultural and Economic Rights (hereinafter ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter ICERD) on integration will be briefly discussed.³⁴ Subsequently, an analysis of the European framework will follow, focusing on the development of integration-related obligations in the European Union, two directives and on judgments of the European Court of Human Rights.

That is not to say that there are no other international standards relevant to promoting human

³² Anuscheh Farahat, 'Discrimination Inside: Non-Discrimination as a Tool of Migrant Integration' in *American Journal of International Law Unbound* (2021), 350
<<https://www.cambridge.org/core/services/aop-cambridge-core/content/view/E434BECFC32358374EFB2EF3451EAE13/S2398772321000556a.pdf/discrimination-inside-non-discrimination-as-a-tool-of-migrant-integration.pdf>> accessed 29 August 2023.

³³ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 75.

³⁴ Ibid, 75-77.

rights in the integration process of migrants and refugees. However, many of them, such as the New York Declaration for Refugees and Migrants of 2016 or the Global Compact for Safe, Orderly and Regular Migration of 2018 are legally non-binding instruments.³⁵ Therefore, the focus will be on the legally binding instruments available with the most robust guarantee to protect immigrants' rights.

2.1.1 Integration in Refugee Law

As a starting point, it is relevant to mention that there is no international legal instrument that specifically deals with migrant integration. However, existing international and customary law guarantees all human beings, regardless of their status, the protection of their human rights.³⁶ One significant international instrument containing a provision related to integration is the 1951 Refugee Convention. The 1951 Refugee Convention emphasizes the importance of integrating refugees and it provides for social and economic rights to assist the process. Local integration is considered one of the three durable solutions possible to refugees. The other two are resettlement and voluntary repatriation. The United Nations High Commissioner for Refugees (hereinafter UNHCR) comprehends local integration as a durable solution that grants refugees to stay permanently in the country of first asylum and to participate fully in the social, economic and cultural life of the host country. The UNHCR has repeatedly stated that integration is the principal durable solution for refugees in industrialized countries. Yet, due to the reluctance of contracting states, often local integration has not been the preferred solution. Especially since the 1990s, there has been a tendency among European states to grant temporary forms of protection.³⁷

There is one specific article of the Refugee Convention, namely Article 34, that specifically calls upon contracting states to, as far as possible, facilitate the assimilation and naturalization of refugees. Article 34 of the Refugee Convention says the following:

“The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular

³⁵ International Organization for Migration (IOM), ‘Global Compact Thematic Paper. Integration and Social Cohesion: Key Elements for Reaping the Benefits of Migration’ (2017), 1-2 <https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ODG/GCM/IOM-Thematic-Paper-Integration-and-Social-Cohesion.pdf> accessed 29 August 2023.

³⁶ Ibid, 2.

³⁷ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 78-80.

make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.”³⁸

It is important to note, however, that states only have a duty to facilitate the process of integration, but there is no duty regarding the result of it. The reason for this rather minimal legal obligation regarding refugee integration is that integration strategies, and naturalization in particular, fall under matters of state sovereignty. The second sentence of Article 34 gives two examples of how to possibly facilitate integration.³⁹ Article 34 provides rather mild obligations on contracting states and yet, it is the only major international treaty provision to impose duties on states regarding integration. The term “assimilation” is questionable and may raise concerns, especially if considering the sociological meaning of it, as discussed previously in Chapter 1. During the drafting of the Convention, the representative of Israel made a remark about the term “assimilation” and its rather negative connotation which was well-known in sociology that linked it to the use of force. The UNHCR’s understanding of the word, however, appears to disregard the sociological meaning of the word and does not imply forced integration, but merely, as previously stated, the integration into social, economic and cultural life of the host country. Another aspect worth mentioning is that in Article 34 of the Refugee Convention, the concepts of assimilation and naturalization are inter-connected. Measures that support integration have the effect of facilitating naturalization. This contrasts the practice of many European states of using integration tests as a prerequisite for naturalization, rather than understanding naturalization as a way to facilitate integration. Much of the focus around the Refugee Convention lies on its definition of a refugee and on the non-refoulement principle. In the context of integration, however, the numerous rights that the Convention entitled to refugees is of a more significant relevance. For example, the Convention entails a number of civil and socioeconomic rights such as the freedom to practice one’s own religion, the right to work and the right to own a property. Furthermore, the Convention grants refugees equal treatment concerning public relief and assistance as it is granted to the host country’s nationals.⁴⁰

2.1.2 Integration in the UN Human Rights Treaty System

Beyond international refugee law, international human rights standards present a means of protection for immigrants during the integration process. Through international human rights

³⁸ Convention Relating to the Status of Refugees (adopted 28 July 1951) Article 34.

³⁹ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 82-83.

⁴⁰ Ibid, 83-85.

law, there is a shift of responsibilities between the state and the people under its jurisdiction. The state can no longer make a distinction in treatment in regard to basic human rights between its citizens and immigrants. The state is no longer allowed to treat non-citizens and immigrants contrary to the obligations enshrined in the international human rights treaties. Additionally, international human rights law can assist to solve the conflict of multiple interests that emerge in multicultural societies competing with one another. Human rights law serves as a neutral framework providing a balance to the various interests that different groups claim and can be a guidance to governments on how to deal with them.⁴¹ One example for this, in the European context, is the famous *S.A.S. v. France* case in which different cultural and religious interests raised human rights issues around the question whether wearing a face veil in public should be allowed or banned.⁴²

Many human rights can be connected to the integration process of immigrants, for example, the right to education, to housing, non-discrimination, freedom of religion. These rights among others are enshrined in the ICCPR and the ICESCR which should protect all persons in State Parties regardless of their nationality or immigration status. It is in Article 2 (1) of the ICCPR that the requirement of non-discrimination is established.⁴³ State Parties are obliged to respect the rights enshrined in this treaty and have to guarantee these rights to all people within their territories and subject to their jurisdiction without any distinction as to “race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status”.⁴⁴ Despite this clear obligation of non-distinction between people when ensuring these rights, the UN Human Rights Committee (hereinafter CCPR) noted, in its General Comment No. 15, a neglect in that respect by State Parties. The CCPR reinforced that “the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness”, stressing that discrimination between citizens and aliens is not permitted. While the Covenant does not provide the right for aliens to enter or reside in the territory of a State party, once aliens are allowed to enter, they are entitled to the rights set forth in it.⁴⁵ As a fundamental principle of the ICCPR, the principle of

⁴¹ Ibid, 87-88.

⁴² International Justice Resource Center (IJRC), ‘S.A.S. v. France: The European Court’s decision in light of human rights doctrine on restricting religious dress’ (2018), <<https://ijrcenter.org/2014/07/11/s-a-s-v-france-the-european-courts-decision-in-light-of-human-rights-doctrine-on-restricting-religious-dress/>> accessed 29 August 2023.

⁴³ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 88-92.

⁴⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> accessed 29 August 2023.

⁴⁵ CCPR General Comment No. 15 (1986): The Position of Aliens Under the Covenant <<https://www.refworld.org/docid/45139acfc.html>> accessed 29 August 2023.

equality is further reinforced in Article 26, potentially ensuring immigrants equality before the law, equal protection by the law, and prohibits discrimination on various grounds such as “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.⁴⁶ Interesting in the context of multicultural societies is Article 27 of the ICCPR, which obliges states not to deny persons belonging to ethnic, religious or linguistic minorities the right to enjoy their own culture, religion or language. Any integration policy that would pressure migrants who belong to a minority, to abandon their culture, language or religion in favor of the host country’s, would constitute a violation of Article 27. There is uncertainty regarding the legitimacy of integration tests or contracts under Article 27, especially when they require migrants to demonstrate their adherence to the majority culture, for example, as a precondition to accessing a secure legal status. However, integration tests by European states generally focus on the knowledge of society, history and democratic values without imposing forced assimilation and would not be considered to violate Article 27.⁴⁷

Another crucial aspect in the integration process is the protection of private and family life, a right enshrined in Article 17 and Article 23 of the ICCPR. Article 17 protects against arbitrary interference with an individual’s privacy, family and home and Article 23(1) says that the “family is the natural and fundamental group unit of society and is entitled to protection by the society and the state”.⁴⁸ The CCPR, in response to individual communications, has determined that a deportation of a non-citizen, depending on the specific circumstance, may constitute a breach of family rights under the ICCPR. An example for this is the *Dauphin v Canada* case. In this case, the CCPR ruled that a proposed deportation of an individual living in Canada since he was two years old with close ties to Canada and no family ties to Haiti was disproportionate to the legitimate aims pursued by the State Party, and violated Article 17 and 23 (1).⁴⁹ The importance of family reunification will be further discussed in the later chapter about European legal framework and standards for immigrant integration.

The ICESCR is similarly structured to the ICCPR, establishing in Article 2 (2) the requirement of non-discrimination and guaranteeing the Covenant’s right to all people, including non-nationals. The ICESCR provides migrants with rights that are necessary for achieving financial independence and a standard of living that allows them to be active

⁴⁶ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 92-93.

⁴⁷ Ibid, 94-97.

⁴⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966)
<<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> accessed 29 August 2023.

⁴⁹ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 97.

members of the new society they live in. An important right to achieve that is the right to work. The right to work and the right to enjoy just and favorable working conditions are set out in Articles 6 and 7 of the ICESCR. It does not entail the absolute and unconditional right to obtain employment, however state Parties must provide an opportunity to access the labor market to all individuals equally.⁵⁰ In Article 11 of the ICESCR, the right to adequate food, clothing and housing is enshrined. The Committee on Economic, Social and Cultural Rights (hereinafter CESCR) emphasized that the right to adequate housing goes beyond a basic right to shelter. Having merely a roof over one's head does not satisfy the obligation of this right, but it should be interpreted as having the right to live somewhere in security, peace and dignity. Similar to the CCPR, the CESCR also regularly comments in its concluding observation on the social, cultural and economic rights of immigrants and asylum seekers. The committee repeatedly points to discrimination suffered by immigrants in the area of housing, employment, health care and education. Nonetheless, the CESCR's concept of integration is even more underdeveloped than that of the CCPR.⁵¹

Additionally to the ICCPR and the ICESCR, there are specialized, international treaties that can provide another layer of protection to specific groups of people. The ICERD and the Convention on the Protection of All Migrant Workers and Members of Their Families (hereinafter CMW) are of relevance in the migrant integration context. However, integration is only the focus in a few articles of the CMW and in general, the influence of this convention is doubtful due to the low number of ratifications. For example, not a single European Union member state has ratified the CMW so far.⁵² The ICERD broadly protects against racial discrimination in the fields of economic, social, cultural, civil and political rights, providing a non-exhausting list in Article 5. However, Article 1 (2) of the ICERD raises questions about whether non-citizens are equally protected under the Convention, as the text says the following:

“This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.”

Clarifications can be found in the General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination (hereinafter CERD). There it is explained that the rights enumerated in Article 5 are in general to be enjoyed by all persons, including non-citizens.

⁵⁰ Ibid, 105ff.

⁵¹ Ibid, 107ff.

⁵² Ibid, 88ff.

Under the ICERD, treating non-citizens differently to nationals constitutes a discrimination, unless the measure is justified by a legitimate aim and it is proportionate. Further, the committee makes recommendations that states pay greater attention to the many forms of discrimination that non-citizens face, for example protecting against hate speech and racial violence. Immigration policies should not be discriminatory on the basis of race, color or origin and obstacles should be removed that prevent immigrants from enjoying their economic, social, and cultural rights.⁵³ The CERD Committee's focus on integration appears to be more pronounced than that of the previously discussed UN treaty bodies. In the concluding observations to a state party's reports, the CERD committee frequently refers to the topic of integration. In various observations, the Committee expresses concerns about the integration of immigrants and minority groups. For example, it notes the cases of discrimination against people with foreign origin in Finland, stressing the concerning lower employment rate among immigrants, especially women. France is recommended to improve the housing situation for people with migrant backgrounds and the Netherlands is requested to facilitate measures for the integration of minority groups in Dutch schools. The committee takes a clear stance that integration does not entail or allow for forced assimilation and that the responsibilities for integration must be shared between the state and the immigrant communities. Integration policies should not prevent members of minority or immigrant groups from "expressing their culture, using their mother tongue or persevering and developing their identity". Thus, it can be concluded that the CERD Committee prefers a multicultural approach in addressing the challenges of diverse societies. Similarly to the definitions in chapter 1, the CERD Committee understands integration as a two-way process, where responsibilities are shared in an appropriate balance between the states and the immigrant communities.⁵⁴

A general thread of the concept of integration presented by the UN treaty bodies and arising from the universal treaty regime is the idea of "the progressive realization of equal rights as national citizens" for immigrants.⁵⁵ The UN treaties discussed above serve as an example of a human-rights-based approach to integration, based on the fundamental principle of non-discrimination and equality. If human rights should be at the center of integration policies, then these human rights instruments can provide a framework of equality within which integration should be discussed on a national level.⁵⁶

⁵³ Ibid, 113-115.

⁵⁴ Ibid, 115-118.

⁵⁵ Ibid, 78.

⁵⁶ Ibid, 122-123.

The discourse in this chapter also aimed to demonstrate that despite the lack of a concrete treaty on migrant integration on an international level, references to integration can be found in UN documents. Each treaty body has shown to have a different focus and depth of concern about migrant integration and the recommendations and observations by the CERD Committee prove to have the most developed concept of integration, compared to the ICCPR and the ICESCR. Lastly, it is worthwhile mentioning that Austria has ratified and is a state party to the ICCPR, the ICESCR and the ICERD and thus has an obligation to uphold these rights, even in the context of migrant integration.⁵⁷

2.2. Migrant Integration under the Council of Europe

The European Convention on Human Rights (hereinafter the Convention or ECHR), with the European Court of Human Rights (hereinafter the Court or ECtHR) who safeguards the rights enshrined in the Convention, is another framework that can provide immigrants a regional layer of protection for their human rights in the course of the integration process, as it applies to all people on the territory of State Parties. At a regional level, the key human right that the Court deals with due to restrictive integration policies is the right to respect for private and family life (Article 8).⁵⁸ The prohibition of discrimination (Article 14⁵⁹) can further be considered a key human right that can be directly or indirectly affected by integration policies.⁶⁰ In the framework of the Council of Europe, integration policies are defined as national public policies such as civic integration and language requirements, or other policies that affect the enjoyment of family reunification and long-term residency as well as access to employment, social benefits and social assistance for immigrants.⁶¹ The primary objective of this chapter is to demonstrate how integration is decisive in the reasoning of the Court in regards to expulsion and admission cases in the ambit of the Article 8 of the Convention. It will be shown that the Court's evaluation of integration-related factors may not always be consistent.

In the context of immigrant integration, Article 8 poses two types of obligations on states: the negative obligation not to expel long-term residents in certain circumstances and the positive

⁵⁷ United Nations Human Rights Treaty Bodies, UN Treaty Body Database
<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=10&Lang=en> accessed 29 August 2023.

⁵⁸ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 124.

⁵⁹ Article 14 is an accessory right. It applies only in conjunction with other rights of the Convention.

⁶⁰ Council of Europe, 'Human rights aspects of immigrant and refugee integration policies' (2019), 9
<https://www.echr.coe.int/documents/d/echr/COE-2019-Human_rights_aspects_of_immigrant_and_refugee_integration_policies> accessed 20 August 2023.

⁶¹ Ibid, 8.

obligation to authorize family reunification in other certain circumstances. The cases before the Court have often concerned immigrants who have lived for a long time in the host country and can be considered long-term residents or who were even born in it and can be considered second-generation immigrants. The concept of integration has gradually become one important feature of reasoning for the Strasbourg Court to decide whether an expulsion would amount to a violation of Article 8. According to some critics, the Court only began to employ structured reasoning in expulsion cases post 2001 with the judgment of the *Boultif v Switzerland* case.⁶² In the *Boultif v Switzerland* case, an Algerian national contested the refusal to renew his residence permit following a criminal conviction for “robbery and damage to property by attacking, together with another person, a man”. He argued that his expulsion violated his right to respect for family life, as his wife was a Swiss national. The applicant was first sentenced to eighteen months’ imprisonment, then by a second court to two years’ unconditional imprisonment but was later granted early release from prison. The Court ruled that the expulsion did indeed violate Article 8, as it was not proportionate to the legitimate aim pursued by the state, to prevent disorder or crime. In this case, the Court also established guiding principles for evaluating the necessity of an expulsion in a democratic society. Several of these principles hold significance in relation to the concept of integration. For example, the duration of the individual living in the country from which they fear expulsion, the individual’s family situation, such as the length of the marriage and the authenticity of the marital relationship, whether they have children, and if so their age. Another guiding principle to consider is “the seriousness of the difficulties which the spouse would be likely to encounter in the applicant’s country of origin, although the mere fact that a person might face certain difficulties in accompanying her or his spouse cannot in itself preclude expulsion”. Other guiding principles that are not related to the degree of integration are the nature and seriousness of the offense, the conduct of the individual during the period after the commission of the offense and the nationalities of the persons concerned.⁶³ The Court’s application of these guiding principles has not been left without criticism, as some say it is unclear which principles weigh more heavily into the reasoning. In the *Boultif v Switzerland* case, the fact that the applicant has only lived for a short period in Switzerland and was only newly married when he committed the robbery did not lead the Court to favor the state’s right to deport him. Thus, the principle of the duration of the individual living in the country and the length of the marriage were not as important factors as the status of the

⁶² Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 126-128.

⁶³ *Boultif v. Switzerland*, 54273/00.

marriage, the applicant's positive conduct since having committed the crime and the difficulties his wife would have faced living in Algeria. In previous cases prior to the *Boutlif* judgment, the Court has paid more attention to the seriousness of the crime and the sentence, and less to an applicant's good behavior following the conviction.⁶⁴ One case where expulsion did not violate the right to respect for family life was the case of *Baghli v France*. In that case the duration of the time lived in the country did not seem to outweigh the severity of the crime. The applicant was an Algerian national who lived in France since the age of two, along with his parents and siblings. Nevertheless, the Court ruled that the interference with the applicant's right to respect his private and family life did not violate Article 8 because the committed offense of drug trafficking "indisputably constituted a serious breach of public order and undermined the protection of the health of others". There were two dissenting opinions, both of which argued that the offense could hardly be considered extremely severe, especially given the relatively minor penalty imposed of initial three months of immediate imprisonment, with twelve months suspended. This sentence was later increased on appeal to one year of immediate imprisonment, with two years suspended. The judges who presented the dissenting opinion contended that the imposed expulsion period of ten years did not appear proportionate and could ruin a man's life who was 29 years old, virtually French and who had the majority of family, social and occupation and cultural ties in France.⁶⁵ The Court ruled similarly in the case of *Benrachid v France*, despite the considerably higher severity of the crime and penalty. The applicant, an Algerian national who had resided in France since the age of seven, was convicted of armed robbery and hostage-taking, resulting in a seven-year prison sentence. The Court reasoned that, considering the applicant was not without any links to his country of origin and the severity of the offense, the deportation was regarded as necessary in a democratic society for the prevention of disorder or crime.⁶⁶ It appears that the Court has a firm position when it comes to crimes such as rape, prostitution, and drug trafficking, and usually does not find a violation of Article 8 when an expulsions follows such crimes, as it did in the above mentioned *Baghli v France* case. Similarly, in the cases of *Dalia v France* and *El Boujaidi v. France*, the extensive residency in France and strong family ties to the country did not outweigh the gravity of drug trafficking crimes. Consequently, the

⁶⁴ Sally Frontman-Cain, 'Boutlif v. Switzerland: The ECHR Fails to Provide Precise Criteria for Resolving Article 8 Deportation Cases' in *Loyola of Los Angeles International and Comparative Law Review* Vol. 25 No 2 (2003), 333 - 335

<<https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1543&context=ilr>> accessed 20 August.

⁶⁵ *Baghli v. France*, 34374/97.

⁶⁶ *Benrachid v France*, 39518/98

Court did not find a violation of Article 8 in these cases.⁶⁷ In contrast, in the case of *Mehemi v. France* the Court ruled that the deportation of the applicant, who was convicted for drug possession and illegal importation of dangerous drugs, amounted to a violation of Article 8. It is important to mention, however, that in the *Mehemi v. France* case, the applicant was an Algerian national born in France, went to school in France and was the father of three children of French nationality.⁶⁸ The applicant had originally French nationality until he was one year old, but lost it only because his father failed to complete the correct formalities. In this case, the Court accepted that the applicant had no links with the country of origin beyond nationality.⁶⁹

There is also a lack of predictability when expulsion cases of second-generation immigrants are concerned, as they are also decided on a case-by-case basis. Indeed, some judges have suggested that the Court clarifies its position on that issue. Certain judges have argued that second-generation immigrants should be treated as nationals and under no circumstances should be expelled from a country.⁷⁰ In his dissenting opinion in the case *Boujlifa v. France*, Judge Morenilla contended that the deportation of the applicant, who came to France at the age of 5 under a family-reunion procedure, was “an aggravation of the criminal penalty imposed on Mr Boujlifa in relation to those imposed on French nationals, so that it is discriminatory”.⁷¹

As mentioned above, since the judgment in *Boultif v. Switzerland* in 2001, the Court’s reasoning has become more structured concerning expulsion cases, and in 2007, in *Üner v. The Netherlands*, the Court added two further guiding principles that needed to be considered in such cases: the best interests and well-being of the children and the solidity of ties with the host country and the country to which one is potentially expelled to. Ties include social, cultural and family ones.⁷² The totality of social ties that immigrants form within the community they reside constitute part of the concept of “private life” within the meaning of

⁶⁷ Sally Frontman-Cain, ‘Boultif v. Switzerland: The ECHR Fails to Provide Precise Criteria for Resolving Article 8 Deportation Cases’ in *Loyola of Los Angeles International and Comparative Law Review* Vol. 25 No 2 (2003), 336ff

<<https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1543&context=ilr>> accessed 20 August.

⁶⁸ Ibid, 338.

⁶⁹ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 133-134

⁷⁰ Sally Frontman-Cain, ‘Boultif v. Switzerland: The ECHR Fails to Provide Precise Criteria for Resolving Article 8 Deportation Cases’ in *Loyola of Los Angeles International and Comparative Law Review* Vol. 25 No 2 (2003), 342

<<https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1543&context=ilr>> accessed 20 August.

⁷¹ Boujlifa v. France, 24404/94.

⁷² Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 128ff.

Article 8 of the Convention. The longer a person resides in a specific country, the stronger the ties are to the country. The Court acknowledged, therefore, that regardless of the existence of family life, private life has to be considered, warranting protection.⁷³

The new principles were then applied by the Court in the later case of *Maslov v Austria*. In this specific case the applicant was a Bulgarian national who legally resided in Austria with his parents and siblings since the age of six. At the age of sixteen he was convicted for aggravated burglary, extortion and assault and at the age of eighteen, after having served his sentences, he was deported to Bulgaria. The Court found a violation of Article 8 of the Convention and argued the importance of considering the young age of the applicant and that the offenses, except for one, were non-violent and have to be viewed as juvenile delinquency. The court stressed that “Article 8 provides no absolute protection against expulsion for any category of aliens (see Üner, cited above, § 55), including those who were born in the host country or moved there in their early childhood ...”, however, that special regard must be paid to aliens who have spent most, or all of their childhood in the host country. In such cases, very serious reasons are required to justify an expulsion, even more so when the person who has committed the offense is a juvenile. Further, the best interests of the child also have to be considered when the person to be expelled is him- or herself a minor. However, in the case of *Bouchelkia v France*, the Court made it clear that an offense as serious as rape, when committed by a minor, and followed with an expulsion order does not amount to a violation of Article 8.⁷⁴

The case law of the European Court of Human Rights serves to demonstrate that integration is a criterion considered by the Court in its assessment of human rights violations in expulsion cases. Nonetheless, the Court rarely directly addresses “integration”, but it uses the vocabulary of “ties to the host country” and “ties to the country of origin” or talks about “links”. A number of key factors that the Court has viewed to be relevant in its consideration of integration include acquisition of nationality, links to the country of nationality, language, and labor market integration.⁷⁵ For example, in the case of *Maslov v Austria*, the Court noted that the applicant did not speak Bulgarian and could not read or write the Cyrillic alphabet. In *Kaya v Germany*, the applicant was born and lived all his life in Germany but was not integrated in the labor market as he had never worked.⁷⁶ The Court’s applied concept of

⁷³ Council of Europe, ‘Human rights aspects of immigrant and refugee integration policies’ (2019), 9ff <https://www.echr.coe.int/documents/d/echr/COE-2019-Human_rights_aspects_of_immigrant_and_refugee_integration_policies> accessed 20 August 2023.

⁷⁴ *Maslov v Austria*, 1638/03.

⁷⁵ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 131.

⁷⁶ *Ibid*, 134ff.

integration in expulsion cases appears to be based on the idea that strong links to the host country must exist, while weak links to the country of origin should be present in order to give proof of integration. This would be a problematic approach since within the modern understanding of integration, as also discussed in Chapter 1, immigrants are entitled to maintain their cultural and linguistic identity. The Court further seems to fail to notice the increase of dual nationalities and transnational belonging and identities.⁷⁷

The other type of cases before the ECtHR, concerning integration and human rights, deal with the admission or refusal of entry of family members, often children, of an applicant. These are commonly referred to as admission cases. Unlike the expulsion cases, admission cases concern a positive obligation by the state.⁷⁸ This positive right, as recognized by the Court, is distinct from the interference that can arise in expulsion cases. The refusal of entry does not inherently constitute an interference with the right to family life, as the Court emphasizes the sovereign right of states to control immigration. Nevertheless, it must be determined whether the state is under a positive obligation to allow for the entry and residence based on the provision of Article 8. It must be noted, however, that only a small number of cases brought before the Court are pure admission cases. That is because, often, there exists a hybrid obligation when the foreign national is already present in the host country, usually due to unauthorized entry or overstaying visa.⁷⁹

In the 1980s, when the first admission cases were presented before the Court, it held a rather restrictive stance on these claims and allowed the states a wide margin of appreciation in assessing whether a positive obligation existed at all. The Court has also made it clear that Article 8 does not impose a general obligation on states to authorize family reunification. When evaluating admission cases, the Court will examine whether there are insurmountable obstacles to establishing family life in the country of origin. In cases where an applicant must choose between the children in their country of origin and other children who are born or substantially brought up in the host country, the Court found that insurmountable obstacles exist. An applicant in such circumstances would have to make a difficult choice which does not respect the right to family life. This reasoning was the basis of the court in the case of *Sen v The Netherlands* and *Tuquabo-Tekle v The Netherlands*. The notion of integration is not as important of a factor in the assessment of the court in admission cases as it is in the expulsion

⁷⁷ Ibid, 136ff.

⁷⁸ Ibid, 141.

⁷⁹ Mark Klaassen, 'Between facts and norms: Testing compliance with Article 8 ECHR in immigration cases' in *Netherlands Quarterly of Human Rights* (2019), Vol. 37 (2), 162.
<<https://journals.sagepub.com/doi/pdf/10.1177/0924051919844387>> accessed 29 August 2023.

cases. The Court does not need to consider factors such as the duration of the stay or the ties to the host country, mostly because the children or family members involved are not yet residing in the host country. Instead, the Court will consider the child's dependence on the parents, the age of the child and factors such as the links to the country of origin. In the case *Sen v The Netherlands*, the Court did, however, consider the level of integration of the applicant's children. It took into account that the children, who had been born and brought up and educated in the Netherlands, had limited or no links to the country of origin besides nationality. Based on these circumstances, the Court argued that the most adequate way to develop family life was to allow the son who lived in Turkey to enter The Netherlands. The Court's hesitation to find a positive obligation in these cases and to further assess a breach highlights the broader challenges of enforcing positive obligations in international law in general. If integration is perceived as the progressive realization of immigrants' positive rights within social policy domains, and closely linked to national identity and sovereignty, the application of international human rights law in the integration may be limited.⁸⁰

Finally, there is one more standard that needs to be briefly addressed in the context of integration: Article 14 of the Convention. This article is crucial for immigrants as it protects from discrimination in the enjoyment of the rights enshrined in the Convention. It prohibits discrimination on grounds, such as sex, race, color, language, religion, political or other opinion, national or social origin, and more. It is not a standalone provision and a claim against Article 14 usually is brought before the Court in conjunction with another substantive right protected by the Convention. The Court has established that while a policy might not violate a substantive right, it may violate Article 14 when read in conjunction with that provision. In the case of *Biao v Denmark*, for example, the Court found indeed a violation of Article 14.⁸¹ Danish immigration law permits family reunification when the so-called "attachment requirement" is fulfilled, meaning that the ties of the family to Denmark are stronger than those to any other country. This requirement is lifted for individuals who have held Danish citizenship for 28 years, commonly referred to as the "28-year rule". Individuals who were non-Danish citizens but were born and raised in Denmark or came as small children and were raised there in their childhood and had legally resided in Denmark for 28 years, were also exempted from the attachment rule. Thus, the implementation of the "28-year rule"

⁸⁰ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 141-144.

⁸¹ Council of Europe, 'Human rights aspects of immigrant and refugee integration policies' (2019), 11 ff <https://www.echr.coe.int/documents/d/echr/COE-2019-Human_rights_aspects_of_immigrant_and_refugee_integration_policies> accessed 20 August 2023.

resulted in a different treatment of Danish nationals, as it led Danish nationals who had a non-Danish ethnic background and who acquired Danish citizenship later in life to suffer from discrimination. In the *Biao v Denmark* case, one applicant enjoyed Danish citizenship, receiving it at age 31, while the second applicant, his wife, requested a residence permit for Denmark. The first applicant did not fulfill the requirement of the “28-year rule” as he had not had Danish citizenship for 28 years, and the Danish authorities claimed that the “attachment requirement” was not met, as the wife had no ties to Denmark besides being married to Mr. Biao. The applicants claimed that the authorities’ refusal to grant them family reunification violated Article 8, both separately and in conjunction with Article 14 of the Convention. The Court had to assess whether this different treatment of Danish nationals based on the “28-year rule” amounted to indirect discrimination on the basis of race or ethnic origin. The Court concluded that there was a violation of Article 14 of the Convention in conjunction with Article 8, as the Danish government has failed to provide sufficient reasons to justify the discriminatory effect of the rule.⁸²

The European Social Charter (hereinafter ESC), serving as a complementary instrument to the ECHR, contains socio-economic rights that provide protection to migrant workers. Nevertheless, as the scope of application is largely limited to nationals of states that have ratified the ESC, the protection is also restricted for migrants and, therefore, will not be discussed further in this thesis.⁸³

⁸² *Biao v Denmark*, 38590/10.

⁸³ Colm O’Cinnéide, ‘Migrants Rights under the European Social Charter’ in *Migrants at Work* (2014), 282ff <https://www.researchgate.net/publication/299885020_Migrant_Rights_under_the_European_Social_Charter> accessed 25 August 2023.

3. Human Rights in Migrant Integration: The European Union Approach

This subchapter will illustrate another layer in which integration is legally embedded at a supranational level, outlining the beginning of integration policy by the European Union, the challenges it has faced, two of its subsequent Directives and judgments by the European Court of Justice (hereinafter ECJ).

On the website of the European Commission it says that with the entry into force of the Treaty of Amsterdam in 1999, for the first time the EU was able to take actions relating to discrimination against migrants from non-EU countries. In the same year, post the 1999 Tampere European Council, the European Commission was additionally mandated to develop a common integration policy.⁸⁴ In the conclusions of the Tampere European Council, in the context about fair treatment of third country nationals, it said that “a more vigorous integration policy” should aim at granting legally residing long-term third-country nationals rights and obligations comparable to EU citizens. A further aim was stated to “enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.”⁸⁵ However, the Tampere conclusions did not advance fast and what followed was a series of soft law instruments without a formal legal basis for cooperation on that matter until the adoption of the Lisbon Treaty. The reason for the development of soft law was due to the reluctance of member states to adopt Directives. The most important policy instruments that followed in the next years, in the realm of soft law, were the National Contact Points on Integration (hereinafter NCPI), created in 2002, the Common Basic Principles on integration (hereinafter CBPs), adopted in 2004, and the European Integration Fund (hereinafter EIF)⁸⁶, adopted in 2007. The CBPs is a set of 11 non-binding principles on which further integration policy was supposed to be based on and the EIF provided funding opportunities for national integration projects implementing the CBPs.⁸⁷ While the CBPs are limited due to their non-binding nature, they illustrate the EU’s approach of integration.⁸⁸ CBP 1 provides a definition of integration as a “dynamic, two-way process of mutual

⁸⁴ European Commission, ‘EU strategy. Why integration matters for the EU’

<https://ec.europa.eu/migrant-integration/eu-grid/eu-strategy_en> accessed 29 August 2023.

⁸⁵ European Parliament, ‘Tampere European Council 15 and 16 October 1999 Presidency Conclusions’

<https://www.europarl.europa.eu/summits/tam_en.htm#a> accessed 13 August 2023.

⁸⁶ The EIF ran out in 2013 and was replaced by the Asylum, Migration and Integration Fund (AMIF) in 2014.

⁸⁷ Pierre Georges Van Wolleghem, ‘Where is the EU’s Migrant Integration Policy Heading? A Neofunctionalist Take on Three Multiannual Financial Framework’ in *International Review of Public Policy* (2019), 225 <<https://journals.openedition.org/irpp/396>> accessed 13 August.

⁸⁸ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 154ff.

accommodation by all immigrants and residents of Member States”. It emphasizes that immigrants should adapt to the host country, while the host country should create “opportunities for the immigrants' full economic, social, cultural, and political participation”. CBP 2 further states that integration implies respecting the basic values of the European Union. In CPB 3, the importance of employment is highlighted as central to the participation of immigrants. CBP 4 states that a basic knowledge of the host country’s language, institutions and history is indispensable. CBP 7 points to the importance of interaction between immigrants and the host country’s citizens and CBP 11 to the importance of evaluation mechanisms to measure the effectiveness of integration measures.⁸⁹ The CBPs are perceived to present a new perspective on integration within the European Union, focusing more explicitly on the responsibility of immigrants themselves. The aspect of linking respect for basic values to the integration process was new and did not exist in the Tampere Programme, where the focus was on fair and equal treatment. Other principles, however, emphasize the role of the states, such as access to employment, education and equal access to institutions similar to national citizens. The CBPs were criticized for representing a shift in the EU’s approach, focusing more on values and culture, and for being rather vague guidelines, not specifying, for example, in CBP 2 what the basic values of the EU represent.⁹⁰ Criticism also arises from the recent developments seeking to involve the responsibility of the country of origin to the integration process. This is perceived as a further attempt to avoid responsibility by the host state and shift it to the immigrants and their country of origin. Despite these criticisms and these developments, the EU soft law instruments, at large, promote an inclusive and participatory form of integration. It represents the idea of a two-way process which involves the efforts of both the immigrants and the members of the host society, and it aims to achieve equal opportunities and participation for immigrants.⁹¹

In 2009, the Treaty of Lisbon was adopted and with it a legal basis for the development of a common integration policy by the EU was provided. The Lisbon Treaty inserted integration into the Treaty on the Functioning of the European Union (hereinafter TFEU), settling that the European Parliament and the Council may provide incentives and support for the action of member states in the realm of integration. This legal basis for integration policies was limited as it did not include legal harmonization in the field of immigrant integration, but rather a

⁸⁹ Council of the European Union, ‘Press Release 26185th Council Meeting Justice and Home Affairs’, 19-24 <https://ec.europa.eu/migrant-integration/sites/default/files/2008-08/doc1_1274_415560448.pdf> accessed 19 August 2023.

⁹⁰ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 154ff.

⁹¹ *Ibid.*, 167ff.

policy coordination. The Lisbon Treaty is also of significance in the context of immigrant integration because it made the EU Charter of Fundamental Rights legally binding to all member states. There are several rights in the EU Charter that are relevant to the integration process, as most of the rights enshrined are entitled not only to EU citizens but also to third country nationals. The Charter also provides provisions for the state's responsibilities. For example, Article 22 of the Charter requires the European "Union shall respect cultural, religious and linguistic diversity". Article 21 is a non-discrimination provision, prohibiting discrimination on any "ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation".⁹² Of much significance in the integration process are Article 7 which ensures respect for private and family life and Article 9 which provides for the right to marry and the right to found a family. Article 24 (3) can also be considered of relevance in the integration process as it provides for the right of the child to maintain direct contact with both parents.⁹³ The European Charter provides a number of economic and social rights relevant for immigrants and their successful integration. Article 14 guarantees the right to education for everyone, Article 15 (1) ensures the freedom to choose an occupation and the right to engage in work, Article 16 ensures the freedom to conduct a business, Article 31 fair and just working conditions and article 31 prohibits child labor. Additionally, Article 35 ensures access to healthcare for everyone.⁹⁴

Integration policies are not only linked to human rights law, but also to immigration law. While immigration law does not explicitly prioritize integration as the main objective, it often considers integration as an additional outcome. EU immigration law, thus, has a significant influence on the integration process. The EU has adopted a number of Directives in the field of immigration law⁹⁵ of which two of them, who have close links to integration, will be briefly discussed below: the Directive 2003/86/EC on the right to family reunification and the Directive 2003/109/EC on a long-term resident status for third-country nationals.⁹⁶

In the preamble of the Family Reunification Directive (hereinafter FRD), Recital 4 recognizes: "Family reunification is a necessary way of making family life possible." Family

⁹² Ibid, 158ff.

⁹³ European Union Agency For Fundamental Rights (FRA), 'Handbook on European law relating to asylum, borders and immigration' (2020), 170
https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-handbook-law-asylum-migration-borders-2020-ed_en.pdf accessed 20 August 2023.

⁹⁴ Ibid, 243ff.

⁹⁵ Another one is the Directive 2011/95/EU and its Art. 34, ensuring individuals granted international protection have the right to access integration programmes.

⁹⁶ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 168ff.

reunification facilitates integration of third-country nationals and also promotes economic and social cohesion.⁹⁷ Family reunification is defined in the FRD in article 2 (d) as follows:

“family reunification’ means the entry into and residence in a Member State by family members of a third-country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry.”⁹⁸

As has been mentioned previously, family life is protected internationally by Article 17 of the ICCPR, by Article 8 of the ECHR and by Article 7 of the EU Charter. Member States therefore have to manage the topic of family reunification as both a human rights and an immigration issue.⁹⁹ In addition, family reunification can even be considered a state’s security issue, as the Directive allows for the refusal of applications for entry and residence of family members on grounds such as public security.¹⁰⁰ The Directive specifies that sponsors eligible for family reunification must hold “a residence permit issued by an EU member state for a period of validity of one year” and have “reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third-country nationals of whatever status”. However, seasonal or temporary workers are not eligible to apply for family reunification under this Directive. Additionally, the Directive requires sponsors and their spouses to have a minimum age of 21, a measure aimed to prevent forced marriages.¹⁰¹ The Directive further defines the eligible family members, outlines the conditions and procedures of family reunification and provides family members with certain rights such as access to the labor market, access to the education system and equal treatment. During the legislative process of adopting the Directive, certain Member States inserted references to integration that appeared to contrast with the recitals in the preamble, such as Recital 3 referring to the Tampere objective of integration. For instance, Austria, Germany and the Netherlands insisted on inserting the last subparagraph of Article 4(1), allowing Member States to derogate from the general rule to authorize the entry and residence of minor children. Member States,

⁹⁷ Council Directive 2003/86/EC on the right to family reunification (2003)

<<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF#:~:text=The%20purpose%20of%20this%20Directive,territory%20of%20the%20Member%20States>> accessed 29 August 2023.

⁹⁸ Ibid.

⁹⁹ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 171.

¹⁰⁰ Council Directive 2003/86/EC on the right to family reunification (2003)

<<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF#:~:text=The%20purpose%20of%20this%20Directive,territory%20of%20the%20Member%20States>> accessed 29 August 2023.

¹⁰¹ Council of Europe, ‘Human rights aspects of immigrant and refugee integration policies’ (2019), 18 <https://www.echr.coe.int/documents/d/echr/COE-2019-Human_rights_aspects_of_immigrant_and_refugee_integration_policies> accessed 20 August 2023.

instead, could verify whether a child over the age of 12 traveling independently meets the condition for integration. The provision is justified by the intent to “reflect the children's capacity for integration at early ages and shall ensure that they acquire the necessary education and language skills in school”. Criticism arises that this idea of integration leads to exclusion and that the rationale for this provision appears to reflect the model of assimilation.¹⁰²

Article 7(2) also holds significance due to its association with the influential ruling by the European Court of Justice in the *K & A* judgment.¹⁰³ Article 7(2) states the following:

“Member States may require third country nationals to comply with integration measures, in accordance with national law.”¹⁰⁴

However, Article 7(2) does not indicate the types of measures that may require compliance, nor does the provision clarify if there are sanctions and what they would look like if compliance with integration measures were to fail.¹⁰⁵ The *K & A judgment* of 2015 answered some of those uncertainties by dealing with pre-departure language requirements as a precondition for family reunification. This measure entails passing a test at an embassy or consulate in the country of origin before arriving in the Netherlands. The claim of *K & A* was that their medical problems came under the hardship clause that the Dutch law provided for. The ECJ argued that Article 7(2) can be construed to mean that integration measures may include pre-departure language requirements, but that these measures have to be proportionate in the light of the integration objective. The ECJ emphasized that these integration measures cannot systematically prevent family reunification. The Court concluded in its ruling that pre-departure language requirements do not violate EU law, as long as hardship clauses take individual circumstances into account. However, the Dutch Law failed to account for such circumstances and found that the test fees were disproportionately high.¹⁰⁶ The FRD has also

¹⁰² Cliodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 171ff.

¹⁰³ Daniel Thym, ‘Towards a Contextual Conception of Social Integration in EU Immigration Law. Comments on P & S and K & A’ in *European Journal of Migration and Law* (2016), 94
<https://www.researchgate.net/publication/298800331_Towards_a_Contextual_Conception_of_Social_Integration_in_EU_Immigration_Law_Comments_on_P_S_and_K_A> accessed 19 August 2023.

¹⁰⁴ Council Directive 2003/86/EC on the right to family reunification (2003)
<<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF#:~:text=The%20purpose%20of%20this%20Directive,territory%20of%20the%20Member%20States>> accessed 29 August 2023.

¹⁰⁵ Cliodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 175.

¹⁰⁶ Daniel Thym, ‘Towards a Contextual Conception of Social Integration in EU Immigration Law. Comments on P & S and K & A’ in *European Journal of Migration and Law* (2016), 94ff
<https://www.researchgate.net/publication/298800331_Towards_a_Contextual_Conception_of_Social_Integration_in_EU_Immigration_Law_Comments_on_P_S_and_K_A> accessed 19 August 2023.

not remained without criticism from scholars. Some argue that the Directive is used as a means for Member States to maintain control over immigration, so as to their interests prevailing over the inclusive vision of integration presented in the soft law of the EU.¹⁰⁷

The second legally binding EU instrument of importance to the integration process that will be briefly discussed is the The Long-Term Residents Directive (hereinafter LTRD). It aims to be a “genuine instrument for the integration of long-term residents into the society in which they live” and ensure equality of treatment with nationals in terms of economic and social rights. The key condition to receive a long-term residence permit is for third-country nationals to have resided legally and continuously for 5 years in a Member State.¹⁰⁸ The applicant must have stable and secure resources, excluding resources to the social assistance system, and have sickness insurance.¹⁰⁹ The status can only be withdrawn on certain limited grounds. People who receive that status are then entitled to equal treatment as nationals in areas of employment, education, social security, tax advantages, etc., which can, however, be subject to derogations. Additionally, third-country nationals are granted a conditional right to free movement within the EU. Also, in the case of the LTRD, certain provisions are the result of strong advocacy by Member States. For example, Article 5(2) was insisted upon by Germany, Austria and the Netherlands. Article 5(2) allows Member States to impose integration conditions on third-country nationals in order to acquire long-term residency. The provision does not include a definition of the integration conditions nor explains the nature and extent to which such conditions may apply.¹¹⁰ The case *P & S* dealt with the topic of the integration conditions, as the Netherlands had introduced an integration test as a requirement for acquiring long-term residency. This requirement, however, did not apply to third-country nationals who were already living in the Netherlands. When *P & S* independently acquired long-term resident status, they were subsequently required to pass the test after the granting of their secure legal status. Non-compliance did not impact their long-term resident status but was subject to sanctions, including fees of up to 1000 EUR. The ECJ ruled that the Dutch provision, involving integration tests, did not hinder the objective of the EU Directive, which is the effective integration of third-country nationals. The judges argued that integration tests can actually facilitate integration and thus be beneficial for both the long-term resident and

¹⁰⁷ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 176.

¹⁰⁸ Ibid 177ff.

¹⁰⁹ Council of Europe, ‘Human rights aspects of immigrant and refugee integration policies’ (2019), 19 <https://www.echr.coe.int/documents/d/echr/COE-2019-Human_rights_aspects_of_immigrant_and_refugee_integration_policies> accessed 20 August 2023.

¹¹⁰ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 177ff.

the society at large. However, Member States must take individual circumstances into account and cannot charge excessive fees or fines.¹¹¹

To conclude this chapter, it is important to highlight that the category of third-country nationals is a broad legal classification that can be further divided into two groups: the beneficiaries of international protection and the economic migrants. Among these groups, refugees enjoy the most integration-related rights, both at an international level and within the domestic legal systems. Beneficiaries of subsidiary protection also enjoy a special treatment compared to other third-country nationals. Some groups of the subcategory of economic migrants also enjoy near-equality with nationals of Member states due to the rules established by the EU.¹¹² The conditions for entry and stay for additional groups of third-country national economic migrants are laid out in other Directives. Students, researchers and highly skilled workers are each covered by separate Directives, all of which grant them more rights than the third-country nationals that have been discussed in relation to the Family Reunification Directive and the Long-Term Residence Directive earlier.¹¹³ For example, highly skilled workers, in particular, who are covered by the Blue Card, enjoy easier access to family reunification than other third-country nationals. Additionally, Blue Card holders are the only category of third-country nationals, who can accumulate periods spent in different Member States in order to qualify for long-term residence status.¹¹⁴

Finally, it can be said that the ECJ has established a number of standards in its case law regarding integration measures in the Family Reunification directive and the Long-Term Residence directives. To name a few, integration policies should aim to facilitate and promote family reunification, and not present an additional restriction to family reunification. Thus, failing to pass integration examination cannot automatically lead to a refusal of family reunification. Specific circumstances of an individual, such as “age, illiteracy, level of education, economic situation or health” should be taken into account and the fulfillment of integration policies assessed in a case-by-case assessment. There should be a possibility of exemption when personal circumstances of a person render the compliance with the integration policies impossible. Restrictions should not make it too difficult for immigrants to

¹¹¹ Daniel Thym, ‘Towards a Contextual Conception of Social Integration in EU Immigration Law. Comments on P & S and K & A’ in *European Journal of Migration and Law* (2016), 91-93
<https://www.researchgate.net/publication/298800331_Towards_a_Contextual_Conception_of_Social_Integration_in_EU_Immigration_Law_Comments_on_P_S_and_K_A> accessed 19 August 2023.

¹¹² Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 170.

¹¹³ Ibid, 183ff.

¹¹⁴ Ibid, 185.

enjoy the rights guaranteed by EU migration law. Integration policies should be proportional and cannot aim to systematically prevent family reunification.¹¹⁵

¹¹⁵ Council of Europe, 'Human rights aspects of immigrant and refugee integration policies' (2019), 20ff <https://www.echr.coe.int/documents/d/echr/COE-2019-Human_rights_aspects_of_immigrant_and_refugee_integration_policies> accessed 20 August 2023.

4. Austria's Approach to Integration

Having previously explored international human rights standards in the context of migrant integration and relevant regional human rights, this chapter shifts its focus to the local level. The focus will be on Austria's integration approach and management. This choice for focusing on Austria is driven by Austria's strong emphasis on the migrant's responsibility for successful integration, as this aspect could be of interest due to potential human rights implications.¹¹⁶

The chapter begins by outlining Austria's migration history and briefly addressing the institutionalization of integration. Next, the main guiding principles for Austria's approach will be highlighted by looking at the National Action Plan Integration (hereinafter NAP.I) and assess whether they are aligned with international and regional standards. Additionally, this chapter will delve into the primary legal framework for integration, the Integration Act, and discuss the potential human rights challenges it presents. Finally, Austria's ranking on the MIPEX will offer another comparison with other countries, providing an international perspective on Austria's success and failures in the integration process.

4.1. Austria's history with integration

Austria has a history of migration. In the multi-ethnic state of the Habsburg monarchy, migration dynamics were ongoing, with people moving from Central and Eastern European regions such as Bohemia, Galica, Bukovina, into the German-speaking territories. By the end of the 19th century, Austrians emigrated to Western Europe and around the turn of the century, there was increased overseas emigration. The trend of emigration continued after the first world war, when many people left to the successor states of the monarchy, and later in the 1930s an increased number of people fleeing political persecution. For many decades, more people emigrated from Austria to other countries than those who migrated to Austria. Since the 1960s, there has been a shift, when the number of people immigrating to Austria began to surpass the number of individuals leaving the country. During this period, Austria recruited foreign workers through agreements with Turkey and Yugoslavia. Some of these workers permanently settled in Austria and brought their family members. With Austria joining the European Union in 1995, it initially did not lead to an increase of immigrants

¹¹⁶ Sieglinde Rosenberger, Oliver Gruber, *Integration erwünscht? Österreichs Integrationspolitik zwischen Fördern, Fordern und Verhindern* (Czernin Verlag 2020), 87-89.

coming from other European Member States. At that time, the predominant group of immigrants still arrived from third countries such as Turkey, Serbia and Bosnia-Herzegovina. By 1999, the percentage of people with foreign origin residing in Austria had risen to nine percent, which was double the number compared to prior to 1989. This increase was linked to the fall of the Iron Curtain, the Yugoslav Wars, and an economic boom in Austria. Since the EU enlargement to Eastern and South-Eastern Europe, immigration to Austria is now primarily European internal immigration. Since 2004, it is the EU/European Free Trade Association (hereinafter EFTA) citizens that make about two thirds of the yearly net immigration. The years of 2015 and 2016 were exceptional, when third-country nationals became the largest group of immigrants.

It is important to note that immigrants arriving yearly to Austria are not a homogenous group. To summarize approximately, there are EU citizens coming to Austria, including Austrian citizens who are returning, and there are third-country nationals. The largest subgroup of third-country national immigrants consists of those who come via the asylum system, comprising nine percent. Only one percent of third-country nationals are skilled workers arriving through the Red-White-Red Card or Blue Card program. The track via family reunification is also of significance as it makes up to nine percent of the yearly immigration.¹¹⁷ Many of these migration dynamics are not under national control, as they are subject to international or EU regulations. However, when it comes to integration, Austria has greater competency in its management.¹¹⁸

4.2. Institutionalizing Integration

Despite a growing number of immigrants since the 1960s, Austria only began to prioritize the topics of migration and integration in political debates around the 1990s. Often, parties used these topics for tactical reasons, resulting in emotional and conflict-stricken discussions.¹¹⁹ At the federal level, also the institutionalization of integration policy developed later than the actual migration trends in Austria.¹²⁰ Various stakeholders are involved in the integration process, and the responsibilities are shared and distributed across the federal, the provincial

¹¹⁷ Sieglinde Rosenberger, Oliver Gruber, *Integration erwünscht? Österreichs Integrationspolitik zwischen Fördern, Fordern und Verhindern* (Czernin Verlag 2020), 30-34.

¹¹⁸ Ibid, 36.

¹¹⁹ Ibid, 45, 56.

¹²⁰ Ibid, 58

and the municipal levels of government.¹²¹ For the purpose of this thesis, the primary focus will be mostly on the federal level.

The very first federal political institution dedicated to integration matters in Austria was the *Flüchtlingsfonds der Vereinten Nationen*, which was established in 1960 as a collaboration between the Ministry of the Interior and the United Nations High Commissioner for Refugees (UNHCR) in 1960. Over time, this institution was separated from the Ministry of Interior and in the 2000s, its role was expanded to include not only refugees but also other groups of immigrants. Today, this institution is known as the Austrian Integration Fund (hereinafter ÖIF), supporting refugees and immigrants in their integration process with counseling and information, as stated on its website.¹²² The ÖIF is, among other things, responsible for providing the obligatory language and regional courses, as outlined in the Integration Agreement (*Integrationsvereinbarung*), that was originally established by the *ÖVP-FPÖ* government in 2003.¹²³ The Integration Agreement of 2003 was not like the term implies a bilateral agreement but an unilateral legal obligation for specific migrants to learn German. Initially, highly qualified workers were exempt from this agreement, but over the years, the target group expanded to include any third-country nationals and their family members who want to settle in Austria.¹²⁴

At first, the Austrian governments dealt with the topic of integration in an interdepartmental way, until the competences were bundled and it was addressed within one department in 2011, in the State Secretariat.¹²⁵ The creation of a State Secretariat within the Ministry of the Interior marked another step in Austria's institutionalization process of integration. This step introduced a shift in approach, focusing on integration through achievement (*Integration durch Leistung*).¹²⁶ Until 2020, the integration agendas have been moved in the Ministry for

¹²¹ Maria-Alexandra Bassermann, *Labour Market Integration of Third-country Nationals in Austria* (2018)

National Contact Point Austria in the European Migration Network, 8.

<https://www.emn.at/wp-content/uploads/2018/10/emn-national-report-2018_labour-market-integration-of-third-country-nationals.pdf> accessed 17 November 2023.

¹²² Österreichischer Integrationsfond, 'Über den ÖIF'

<<https://www.integrationsfonds.at/der-oeif/ueber-den-oeif/>> accessed 17 November 2023.

¹²³ Sieglinde Rosenberger, Oliver Gruber, *Integration erwünscht? Österreichs Integrationspolitik zwischen Fördern, Fordern und Verhindern* (Czernin Verlag 2020), 63.

¹²⁴ Elke Haslinger, 'Does Austria Have a Uniform Concept of Integration for Migrants?' in *University of Vienna Law Review* (2020) Vol. 4 No 1, 119-120.

<<https://viennalawreview.com/index.php/vlr/article/view/5317/5213/>> accessed 17 November 2023.

¹²⁵ Sieglinde Rosenberger, Oliver Gruber, *Integration erwünscht? Österreichs Integrationspolitik zwischen Fördern, Fordern und Verhindern* (Czernin Verlag 2020), 65.

¹²⁶ Elke Haslinger, 'Does Austria Have a Uniform Concept of Integration for Migrants?' in *University of Vienna Law Review* (2020) Vol. 4 No 1, 121.

<<https://viennalawreview.com/index.php/vlr/article/view/5317/5213/>> accessed 17 November 2023.

Europe, Integration and Foreign Affairs and have since been located into the Federal Chancellery.¹²⁷

An essential framework for integration policies and measures in Austria is the *NAPI* that was published in 2010. It presents a plan for integrating foreign citizens who are permanent residents in Austria, discussing challenges, principles and goals of integration.¹²⁸ Academics have called the *NAPI* as a founding document of the integration policy in Austria. In the same year, the Integration Advisory Board and an Expert Council were established. The Integration Advisory Board serves as a network comprising key institutions and stakeholders, including federal ministries, provinces, municipalities, social partners and charitable organizations. The Expert Council supports the implementation of the *NAPI* and produces yearly integration reports.¹²⁹ The next significant milestone after the establishment of the *NAPI* and the integration consolidation into a single department in 2011 was the enactment of the Integration Act of 2017.¹³⁰

4.3. National Action Plan for Integration

The National Action Plan is helpful in identifying Austria's overall approach, guiding principles, and specific focus areas, as it divides integration into seven designated “fields of action” (“*Handlungsfelder*”): language and education, work and occupation, rule of law and values, health and social affairs, intercultural dialogue, sports and leisure, and housing and the regional dimension of integration. The plan’s objective is to coordinate and structure Austria's nationwide integration management to achieve successful integration measures. It stresses the need to harness the potential of people with migrant backgrounds and highlights that Austria’s economy and social system offer opportunities for immigrants to lead self-determined lives. The definition of integration in the National Action Plan for Integration is similar to those discussed in previous chapters, defining integration as a two-way process. Emphasis is put on mutual appreciation and respect, with clear rules that ensure social cohesion and peace. At UN and EU level, equal treatment and non-discrimination was a significant standard. In the preamble of the *NAPI* non-discrimination is mentioned two times, stating that measures against racism and discrimination need to be implemented. However, the focus appears to be

¹²⁷ Bundeskanzleramt, ‘Integration’ <<https://www.bundeskanzleramt.gv.at/agenda/integration.html>> accessed 17 November 2023.

¹²⁸ Bundeskanzleramt, ‘Nationaler Aktionsplan Integration’ <<https://www.bundeskanzleramt.gv.at/agenda/integration/nationaler-aktionsplan.html>> accessed 17 November 2023.

¹²⁹ Sieglinde Rosenberger, Oliver Gruber, *Integration erwünscht? Österreichs Integrationspolitik zwischen Fördern, Fordern und Verhindern* (Czernin Verlag 2020), 64ff.

¹³⁰ Ibid, 65-69.

on immigrants' responsibility for their integration, as the self-responsibility of immigrants is repeatedly highlighted. Successful integration is primarily defined by criteria such as acquiring sufficient proficiency in the German language, adhering to Austrian and European legal and value systems, and achieving economic self-sufficiency. The plan also underscores the importance of immigrants participating in economic, social, political, and cultural processes, which would reflect the standards discussed in the previous Chapter.¹³¹

As mentioned above, the NAP.I structures integration in different fields of action and discusses in each field the challenges, principles and goals. In the area of language and education the challenges of poor German skills among children who are not native-German speakers are being addressed. It is highlighted that poor language skills in German can be a reason, next to poverty and a lack of social mobility, for migrant children to be slower at reaching higher educational opportunities. It is recognized that proficiency in the German language is a prerequisite for participation in economic and social life and that whoever wants to permanently reside in Austria must be prepared to learn German. Target-group-specific language courses and training measures should be provided for migrants with special needs, such as basic education and combating illiteracy, or for groups facing more barriers, such as migrant women. It is further emphasized that Austria's economic potential is tied to harnessing the potential and skills of migrants and thus the linguistic and professional qualification of settled migrants should be promoted. A specific objective in line with the Integration Agreement is outlined, emphasizing the attainment of a B1 level of German proficiency. Furthermore, migrants who intend to settle permanently in Austria will be required to reach at least an A1 level prior to immigration. It mostly targets family members of third-country nationals entitled to join but excludes those with higher qualifications who demonstrate lower need for integration.¹³²

In the area of work and occupation, it is explicitly stated that professional activity is the key to a successful integration process and that immigration has to be aligned with Austria's labor market interests. Poor wage and working conditions are hindering the integration process. Measures against discriminations also have to be implemented in the labor market, as migrants should enjoy equal and respectful treatment in the job market. It further says that the integration into the labor market of women and adolescents with a migration back should be promoted.¹³³

¹³¹ Bundeskanzleramt, 'Nationaler Aktionsplan für Integration', 1-3.

<<https://www.bundeskanzleramt.gv.at/agenda/integration/nationaler-aktionsplan.html>> accessed 24 November 2023.

¹³² Ibid, 11-14.

¹³³ Ibid, 19-23.

The third field of action in the NAPI discusses the rule of law and values, emphasizing the protection of women's rights, the importance of respecting democracy, fundamental and human rights, and highlighting again the principle of non-discrimination. Integration policy is described as addressing security concerns, as it plays an essential role in maintaining social peace and preventing crime. Additionally, it defines the endpoint of the integration process as obtaining Austrian citizenship.¹³⁴

In the area of health and social affairs, the National Action Plan addresses several issues. These include the health challenges faced by migrants due to physically strenuous work, as well as the negative effects of limited German language skills, lack of knowledge about the health system, and discrimination, all of which can lead to health disadvantages for migrants. Increased intercultural competences shall be developed in healthcare facilities to address migrant-specific health issues. Furthermore, it emphasizes improving information and counseling services for migrant women, including psychosocial support, sex education, child and women's health and family planning.¹³⁵

The NAPI also addresses integration in the areas of intercultural dialogue, sports and leisure, housing and the regional dimension. It emphasizes the importance of open dialogues about cultural similarities and differences, promoting mutual understanding and respect. The dialogue involves stakeholders from civil society, religious communities but also experts and the media. Again values are being mentioned, stressing that values and rules need to be communicated clearly to immigrants.¹³⁶ It is recognized that sports clubs and sports, in general, can serve as a vehicle for integration, bridging the space between the immigrant population and Austrian society. Clubs that dedicate themselves to the integration of migrants should be supported. In the final field of action that focuses on housing and the regional dimension the issue of discrimination and segregation is being discussed. It is mentioned that urban development policies must deal with the population growth and segregation processes. Additionally, the plan acknowledges that migrants often live in less space with comparatively larger households and that deficiencies in the quality of housing can reduce migrants chances to social participation and individual development.¹³⁷

In the previous chapters it has been established that the UN's approach to migrant integration involves immigrants progressively enjoying equal rights as citizens. It appears, however, that the National Action Plan suggests that immigrant's equal social and economic participation

¹³⁴ Ibid, 24-27.

¹³⁵ Ibid, 28-32.

¹³⁶ Ibid, 33-36.

¹³⁷ Ibid, 40-44.

largely depends on their willingness to learn the German language and respect the democratic and human rights values, rather than on an extension of their rights to become equal citizens.¹³⁸ To examine the approach that Austria takes today when it comes to integration, a brief look into the current government program of 2020-2024 will be taken. In the current government program the focus on migrant's responsibility in the integration process is again highlighted. It expressly states that the Austrian integration policy is guided by the principles of "*Integration durch Leistung*" (integration through performance) and "fördern und fordern" (promote and demand). This means while Austria promotes integration, the active contribution of immigrants and their achievements is emphasized.¹³⁹ Austria's approach also highlights that integration does not seem to be a voluntary process because when the offers provided by the state are refused by immigrants, sanctions apply.

The NAPI covers many standards similar to the ones discussed within the UN system, including non-discrimination, the right to work and to enjoy just and favorable working conditions, and the right to adequate housing. While the Action Plan mentions the availability of the rule of law and its protections for all people, its main emphasis is on the expectation that immigrants must adhere to the values and rules.

Immigrant women receive special attention in both the NAPI and the government programme of 2020-2024. In fact, three focus points of integration in the government programme include special measures for migrant women, such as integration into the labor market, increased German language offerings and literacy courses with childcare facilities, and measures to protect against all forms of violence. The second focus point being integration and education and the third being integration and labor market and the fourth being social integration.¹⁴⁰ The government programme of 2020-2024 also targets persons entitled to asylum and beneficiaries of subsidiary protection. The NAPI, however, only targets third-country nationals and second- or third-generation immigrants. There is a separate plan, similarly structured to the NAPI, that targets refugees, that is the *50 Action Points: A Plan for the Integration of Persons entitled to Asylum or Subsidiary Protection in Austria*.¹⁴¹

¹³⁸ Ibid, 26.

¹³⁹ Bundeskanzleramt, 'Regierungsdokumente. Regierungsprogramm', 144-146.
<<https://www.bundestkanzleramt.gv.at/bundestkanzleramt/die-bundesregierung/regierungsdokumente.html>>
accessed 24 November 2023.

¹⁴⁰ Ibid.

¹⁴¹ Bundesministerium für Europäische und internationale Angelegenheiten, '50 Punkte – Plan zur Integration von Asylberechtigten und subsidiär Schutzberechtigten in Österreich'
<<https://www.bmeia.gv.at/ministerium/aktuelles/50-punkte-zur-erfolgreichen-integration>> accessed 24 November 2023.

4.4. Austrian Integration Act

4.4.1 Introducing the Austrian Integration Act

The adoption of the Integration Act in 2017 was the first federal act that provided a legal framework for all existing institutions involved in the integration process. It defines the responsibilities of the Ministry of the Interior, the Austrian Integration Fund, the ministry of Labour and Social Affairs as well as of the Austrian Public Employment Service.¹⁴²

In the first part of the Act, under “Objectives”, a clear division of responsibilities is expressed by distinguishing between integration promotion and integration obligation. It says that the objective of this act is the “rapid integration of legal residents in Austria into Austrian society”. In §1 para. 2, the Act emphasizes the importance of upholding Austrian values and its legal system. Respect for values and the legal order forms the foundation for a peaceful coexistence among people from different backgrounds.¹⁴³ In § 2 para. 1 of the Integration Act, the term integration is being defined, and as already mentioned in the Introduction, it is defined as “a process involving society as a whole, the success of which depends on the participation of all people living in Austria and is based on personal interaction”.¹⁴⁴ The Act differentiates between integration measures for persons granted asylum, beneficiaries of subsidiary protection, displaced persons on the one hand, and legally settled third-country nationals on the other hand. Further, it outlines two types of integration measures: language courses and values and orientation courses. While individuals granted asylum and beneficiaries of subsidiary protection are required to sign an integration declaration (“Integrationserklärung”) that obliges them to complete the language and value and orientation courses, legally settled third-country nationals are obliged to fulfill the so-called integration agreement (Integrationsvereinbarung). It is mandatory for individuals granted asylum or subsidiary protection aged fifteen or older to reach a B1 level of German proficiency. The German courses must include values and orientation knowledge. For legally settled third-country nationals, the integration measures are divided in two modules. The first module requires gaining a German knowledge level of A2 and acquiring a basic understanding of the Austrian values, the legal and social order within two years of the first-time issuance of a residence title. If personal circumstances hinder the individual to

¹⁴² Sieglinde Rosenberger, Oliver Gruber, *Integration erwünscht? Österreichs Integrationspolitik zwischen Fördern, Fordern und Verhindern* (Czernin Verlag 2020), 69.

¹⁴³ Bundesgesetz zur Integration rechtmäßig in Österreich aufhältiger Personen ohne österreichische Staatsbürgerschaft (Integrationsgesetz – IntG).

¹⁴⁴ Ibid.

comply with the obligations of module one, an extension beyond the two-years period may be granted. Module one is considered completed when individuals positively pass an integration exam. For third-country nationals who want to obtain a permanent resident permit, the successful completion of module two is required. In this case, they have to reach a B1 proficiency in German and gain in-depth knowledge of Austrian values and the legal and social order. At the end of module 2, there is again an integration exam. If module one is not completed within the obligated time period, the individual is confronted with an administrative fine up to 500 euros. In § 16c of the Austrian Integration Act, it says that persons entitled to asylum, subsidiary protection and third-country nationals who receive social assistance benefits are obliged to complete a B1 German integration exam and “fully participate, duly cooperate and complete a values and orientation course ...”.¹⁴⁵ In § 9 para. 2 of the Social Assistance Act is a reference to the Integration Act that regulates the consequences of a culpable breach of the obligations pursuant to § 16c Para. 1 IntG. It says that in the event of a breach, benefits must be reduced by at least 25% over a period of at least three months.¹⁴⁶

4.4.2 Human Rights Challenges of the Austrian Integration Act

Austria has an obligation to respect, protect and fulfill the human rights of immigrants and refugees. The Integration Act does not refer to these international obligations or mention that a successful integration may also depend on upholding human rights of immigrants. Nor does it mention the vulnerability and dependency of this group of persons. As discussed in the previous chapter about the European Union’s approach, the Austrian Integration Act is a good example for the shift undertaken in Europe around the 1990s, when states began to strongly link integration with values and national identity.¹⁴⁷ This shift of perspective may suggest an underlying belief that views integration of immigrants as a potential threat to national cohesion. This concern is primarily focused on the chances of immigrants' social integration and how well they can accept the values of the host country, rather than addressing the economic or political aspects of migrant integration.¹⁴⁸

¹⁴⁵ Bundesgesetz zur Integration rechtmäßig in Österreich aufhältiger Personen ohne österreichische Staatsbürgerschaft (Integrationsgesetz – IntG).

¹⁴⁶ Bundesgesetz betreffend Grundsätze für die Sozialhilfe (Sozialhilfe-Grundsatzgesetz).

¹⁴⁷ Clíodhna Murphy, *Immigration, Integration and the Law. The Intersection of Domestic, EU and International Legal Regimes* (Routledge 2016, Ebook), 154ff.

¹⁴⁸ Nadzeya Laurensyeva, Alessandra Venturini, ‘The Social Integration of Immigrants and the Role of Policy’ in *Intereconomics* (2017), Vol. 52, 285
<<https://www.intereconomics.eu/contents/year/2017/number/5/article/the-social-integration-of-immigrants-and-the-role-of-policy-a-literature-review.html>> accessed 24 November 2023.

In a statement from 2017 on the draft of the Integration Act, *Amnesty International Österreich* (hereinafter Amnesty) expressed overall support but suggested a number of changes. Amnesty criticized that in § 1 Abs. (2) only two of the principles of the Austrian constitution are nominated - liberal and democratic. The other ones such as federalism and the separation of power are not mentioned. Regarding the definition given of the concept of integration in the Act, Amnesty pointed to a contradiction, as integration is first described as a process involving society as a whole, but later in another sentence a one-sided responsibility of immigrants is described. Furthermore, Amnesty warns against viewing migrant integration solely made up of the two components of “participation through gainful employment and the rapid achievement of self-sufficiency”.¹⁴⁹ It also rejects the perception that the granting of Austrian citizenship should represent the successful completion of the integration process. This would not satisfy the broad meaning of the concept of integration as a lasting process involving society as a whole and which cannot be considered completed by one official act.¹⁵⁰ Understanding Austria’s international obligations in the context of human rights in the integration process, also includes the positive duty to eliminate discrimination.¹⁵¹ Discrimination of foreigners and their exclusion from social benefits was already at the center of a ruling by the ECtHR in 1996 in the *Gaygusuz v. Austria* case. When the ECtHR repealed an Austrian law that excluded non-Austrians from receiving emergency assistance solely on the basis of nationality.¹⁵²

There is one group that does not fall under the scope of the Integration Act, that is the asylum seekers. While it cannot be said that this constitutes a direct discrimination, Amnesty noted that this contradicts § 1 of the Act because asylum seekers are also legally resident in Austria, and Amnesty suggested to include this group within the scope of this federal act, as it would correspond to the objective of the act.¹⁵³

¹⁴⁹ Amnesty International Österreich, ‘Stellungnahme zum Entwurf betreffend ein Bundesgesetz, mit dem ein Integrationsgesetz und ein Anti-Gesichtsverhüllungsgesetz erlassen sowie das Niederlassungs- und Aufenthaltsgesetz, das Asylgesetz 2005, das Fremdenpolizeigesetz 2005, das Staatsbürgerschaftsgesetz 1985 und die Straßenverkehrsordnung 1960 geändert werden’.

<<https://www.amnesty.at/media/2058/stellungnahme-zum-anti-gesichtsverhuellungs-gesetz.pdf>> accessed 24 November 2023.

¹⁵⁰ Ibid.

¹⁵¹ Clíodhna Murphy, Mary Gilmartin, Leanne Caulfield, ‘Building and Applying a Human Rights-Based Model for Migrant Integration Policy’ in *Journal of Human Rights Practice* (2019), Vol. 11, 446

<https://mural.maynoothuniversity.ie/13882/1/CM_building.pdf> accessed 24 November 2023.

¹⁵² *Gaygusuz v Austria*, 1737/90

¹⁵³ Amnesty International Österreich, ‘Stellungnahme zum Entwurf betreffend ein Bundesgesetz, mit dem ein Integrationsgesetz und ein Anti-Gesichtsverhüllungsgesetz erlassen sowie das Niederlassungs- und Aufenthaltsgesetz, das Asylgesetz 2005, das Fremdenpolizeigesetz 2005, das Staatsbürgerschaftsgesetz 1985 und die Straßenverkehrsordnung 1960 geändert werden’, 6

<<https://www.amnesty.at/media/2058/stellungnahme-zum-anti-gesichtsverhuellungs-gesetz.pdf>> accessed 24 November 2023.

It can be argued that the Austrian Integration Act suggests that the main responsibility lies with immigrants to comply with the integration requirements, considering also the possible sanctions that can follow from a breach of these obligations. As discussed in the previous chapter, the EU Directives on Family Reunification and Long-Term Residency allow for such integration requirements, and also for reasonable fees when the integration obligations are not met.¹⁵⁴ However, as Amnesty states, if persons entitled to asylum and subsidiary protection must comply with “the fundamental values of the legal and social order”, as in § 6 of the Integration Act, these values must be defined. The Integration Act fails to clearly define these values, and it cannot be that this group of people must commit to complying to undefined values. This way it is a vague obligation that would give administrative bodies too much leeway, leaving this group particularly vulnerable to misuse of power.¹⁵⁵ This could potentially also touch upon Article 13 of the ECHR, as the courts would have no basis for control of the application of the respective norm if the legal terms are undefined or too vague.¹⁵⁶ Above all, the scope for discretion is too great if the consequence could be that persons entitled to asylum and subsidiary protection as well as third-country nationals risk a reduction of at least 25% of their social benefits for three months, as laid down in In § 9 para. 2 of the Social Assistance Act.

Furthermore, Amnesty pointed out that the obligation to “full participation” of the offered courses implies a disproportionate measure, if an absence due to illness, for example, would also lead to a non-fulfillment of the obligation.¹⁵⁷

It is important to mention that an obligation for immigrants to learn German is not a violation

¹⁵⁴ Daniel Thym, ‘Towards a Contextual Conception of Social Integration in EU Immigration Law. Comments on P & S and K & A’ in *European Journal of Migration and Law* (2016), 90-94
<https://www.researchgate.net/publication/298800331_Towards_a_Contextual_Conception_of_Social_Integration_in_EU_Immigration_Law_Comments_on_P_S_and_K_A> accessed 19 August 2023.

¹⁵⁵ Amnesty International Österreich, ‘Stellungnahme zum Entwurf betreffend ein Bundesgesetz, mit dem ein Integrationsgesetz und ein Anti-Gesichtsverhüllungsgesetz erlassen sowie das Niederlassungs- und Aufenthaltsgesetz, das Asylgesetz 2005, das Fremdenpolizeigesetz 2005, das Staatsbürgerschaftsgesetz 1985 und die Straßenverkehrsordnung 1960 geändert werden’, 8
<<https://www.amnesty.at/media/2058/stellungnahme-zum-anti-gesichtsverhuellungs-gesetz.pdf>> accessed 24 November 2023.

¹⁵⁶ Jura Individuell, ‘Bestimmte Rechtsbegriffe im öffentlichen Recht’
<<https://www.juraindividuell.de/artikel/unbestimmte-rechtsbegriffe-im-oeffentlichen-recht/#:~:text=Der%20,,unbestimmte%20Rechtsbegriff%20zählt%20–,bewusst%20nicht%20abschließend%20definiert%20wird>> accessed 24 November 2023.

¹⁵⁷ Amnesty International Österreich, ‘Stellungnahme zum Entwurf betreffend ein Bundesgesetz, mit dem ein Integrationsgesetz und ein Anti-Gesichtsverhüllungsgesetz erlassen sowie das Niederlassungs- und Aufenthaltsgesetz, das Asylgesetz 2005, das Fremdenpolizeigesetz 2005, das Staatsbürgerschaftsgesetz 1985 und die Straßenverkehrsordnung 1960 geändert werden’, 8
<<https://www.amnesty.at/media/2058/stellungnahme-zum-anti-gesichtsverhuellungs-gesetz.pdf>> accessed 24 November 2023.

of the constitution.¹⁵⁸ However, the justification provided by states for the introduction of such language and orientation courses for immigrants are questionable, as they claim they serve to promote integration. Contrary, some experts argued that the underlying reason is to limit the access to a permanent residence status to only the “well integrated” immigrants.¹⁵⁹

4.5. Excursion on Family Reunification under Austrian law

Neither the National Action Plan for Integration, nor the current government programme cover the specific human right of family life in relation to integration, as discussed in Chapter Two under regional European standards. The absence of this topic in integration policy documents may imply that Austria treats family life and reunification separately from integration, not considering it a part of it. Family reunification for third-country nationals is instead regulated under the Settlement and Residence Act 2005, specifically in § 46.¹⁶⁰ For family members of persons who have been granted asylum status it is regulated under the Asylum Act 2005, specifically in § 34.¹⁶¹

There are several significant differences when it comes to Family Reunification under the Settlement and Residence Act and under the Asylum Act. Firstly, the Settlement and Residence Act allows for family reunification both in the cases of family formation before or after entry in the host country. In contrast, the provisions of the Asylum Act only apply for family reunification to already existing families. Further, the entry of family members of third-country nationals is regulated by a yearly quota.¹⁶²

Generally, family reunification is more favorable under the Asylum Law due to fewer requirements, while under the Settlement and Residence Act family members are subject to granting requirements. These criteria include holding a health insurance, having accommodation that meets local standard, demonstrating a fixed and regular income and proof of language skills at A1 level before moving to Austria.¹⁶³ Despite the fact that family

¹⁵⁸ Magdalena Pöschl, ‘Integrationsvereinbarung alt und neu’ in *Migralex* (2006), 43
<https://staatsrecht.univie.ac.at/fileadmin/user_upload/i_staatsrecht/Poeschl/Publikationen/2006_Integrationsvereinbarung_alt_und_neu.pdf> accessed 24 November 2023.

¹⁵⁹ Anita Böcker, Tineke Strik, ‘Language and Knowledge Tests for Permanent Residence Rights: Help or Hindrance for Integration?’ in *European Journal of Migration and Law* (2011), Vol. 13, 166ff
<<https://repository.ubn.ru.nl/bitstream/handle/2066/93190/1/93190.pdf>> accessed 27 November 2023.

¹⁶⁰ Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich (Niederlassungs- und Aufenthaltsgesetz – NAG)

¹⁶¹ Bundesgesetz über die Gewährung von Asyl (Asylgesetz 2005 - AsylG 2005).

¹⁶² Alexandra König, Albert Kraler, *Familienzusammenführung: Hindernis oder Förderung der Integration? – Der österreichische Länderbericht - Zusammenfassung* (ICMPD 2013), 4
<https://www.icmpd.org/file/download/54199/file/Family%20Reunification%20-%20A%20barrier%20or%20facilitator%20of%20integration%20-%20Country%20Report%20Austria_Summary%20DE.pdf> accessed 27 November 2023.

¹⁶³ *Ibid.*, 4ff.

reunification is made easier for refugee families, this group of immigrants still face challenges during the process. As mentioned earlier, the family relationships of spouses and registered partners must have existed before fleeing their country of origin. If this is not the case, individuals must apply for family reunification under the Settlement and Residence Act, subjecting them to all of its requirements for joining the sponsor. For both paths, whether under the Asylum Law or the Settlement and Residence Act, proving family relations can be challenging. In a country report by the International Centre for Migration Policy Development (hereinafter ICMPD) about Austria from 2013, interviewees described the process of obtaining, submitting, and often translating documents as complex and financially strenuous. Many interviewees inquired about the procedure under the Settlement and Residence Act expressed concerns about the methods used by authorities, describing them as disproportionate intrusion into their private lives. For instance, authorities performing what is known as a “shame marriage check” visited the private accommodation to verify cohabitation in cases of newly formed family relations.¹⁶⁴

One of the procedural challenges for family reunification in Austria is the length of the process, which when prolonged can cause complications. For instance, if an individual is a minor whose parents seek to join in the host country but the procedures are prolonged to the extent that they reach age of majority by the time the authorities decide on the case, family reunification would no longer be possible. This differs from the provisions under the Asylum Act where the age of the applicant at the time of submitting the application is the decisive factor for family reunification.¹⁶⁵ Another challenge may arise for family members hoping to join the sponsor in the host country, as they are required to represent themselves before an authority. Article 19 of the Settlement and Residence Act says that the family members seeking family reunification must represent themselves personally before an Austrian embassy or consulate. However, not every country has an Austrian embassy or consulate, for instance in Afghanistan or Somalia, and family members are thus required to travel long distances to fulfill this rule.¹⁶⁶

In terms of integration requirements for family reunification, it is important to note that family members are not obligated to take a comprehensive integration test, but individuals arriving via the Settlement and Residence Act are required to demonstrate language skills. Before arriving in Austria they must prove a German proficiency of A1. Individuals being

¹⁶⁴ Ibid, 12-14.

¹⁶⁵ Rainer Lukits, *Family Reunification of Third-Country Nationals in Austria* (EMN 2016), 48
<<https://www.emn.at/wp-content/uploads/2017/02/FamilyReunification-of-Third-Country-Nationals-in-Austria.pdf>> accessed 27 November 2023.

¹⁶⁶ Ibid, 49- 50.

younger than fourteen when applying or people who cannot be expected to demonstrate language skills due to their physical or mental health are exempted from this rule. In addition, an exception may be granted to individuals on the grounds of Art. 8 ECHR, if it is necessary to maintain family life. After having arrived in Austria, family members are required to complete Module 1 of the Integration Agreement. If they fail to complete the module within two years after the residence permit has been issued (which under certain circumstances can be prolonged), they risk that their residence title might not be extended and an administrative fine of 50 - 250 EUR might be imposed on them.¹⁶⁷

The Ministry of the Interior's motivation behind requiring a A1 level German proficiency already prior to arrival is to encourage greater participation in society. This perspective, however, differs from the views of experts who criticize the cohesive character of this requirement. For instance, it does not account for varying starting points of the individuals, as some might struggle with illiteracy or others may live far away from teaching or testing centers. Furthermore, it is widely acknowledged that a language is best learnt in the country where the language is spoken.¹⁶⁸ The pre-entry language test was introduced in 2011 as part of a broader reform of the Settlement and Residence Act. This reform marked a shift in the importance of distinguishing between "desired migration", primarily consisting of highly qualified workers, and "undesired migration". Family reunification fell under the type of undesired migration of low-skill workers and was viewed as problematic. The reform also amended the rules under the Integration Agreement of obtaining a A2 level of German proficiency within five years reducing the compliance period to within two years. Furthermore, the requirement of having a B1 level of German was introduced in order for naturalization and permanent residence.¹⁶⁹

Lastly, a brief look into the right to employment of family members joining the sponsors residing in Austria will be taken. In general, the rights of family members migrating to Austria depend on their residence title, which is largely determined by the residence title of the sponsor. Therefore, not all family members are treated equally, and whether they are allowed to engage in gainful employment or become self-employed varies based on their specific residence status and the regulations applying to it. For example, family members of individuals granted asylum status or subsidiary protection, who consequently receive the same

¹⁶⁷ Ibid, 30ff.

¹⁶⁸ Alexandra König, Albert Kraler, *Familienzusammenführung: Hindernis oder Förderung der Integration? – Der österreichische Länderbericht - Zusammenfassung* (ICMPD 2013), 15
<https://www.icmpd.org/file/download/54199/file/Family%2520Reunification%2520-%2520A%2520barrier%2520or%2520facilitator%2520of%2520integration%2520-%2520Country%2520Report%2520Austria_Summary%2520DE.pdf> accessed 27 November 2023.

¹⁶⁹ Ibid, 7-8.

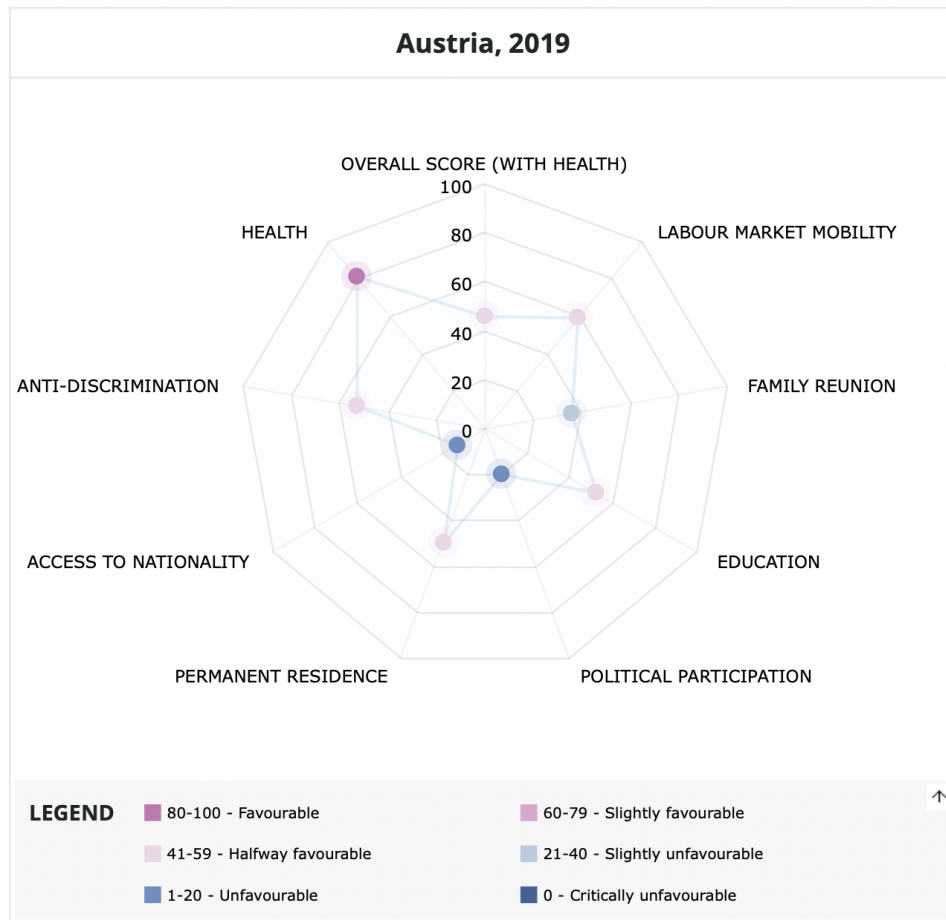
legal status, can pursue gainful employment without any limitations or a work permit, either being self-employed or being dependently employed. The same applies to family members holding a Red-White-Red Card Plus. Contrary, family members who hold a Temporary Residence Permit - Family Cohabitation need a work permit before being allowed to pursue gainful employment. Family members holding a Settlement Permit, in contrast, are entitled to only be gainfully self-employed, but not dependently employed.¹⁷⁰

4.6. Austria's score on the Migrant Integration Policy Index

Finally, Austria's efforts in managing migrant integration will be viewed from another supranational lens: the MIPEX. In Chapter 1, the MIPEX has already been introduced as a tool that measures and compares integration policies in 56 countries worldwide. In its last assessment that was published in 2020, Austria has scored 46 points out of 100, placing it in the group that views migration only as a temporary occurrence, the so-called group of "Temporary integration - Halfway unfavorable". This group is characterized by not fully, but only halfway, granting immigrants basic rights and equal opportunities. Furthermore, the immigrants lack a secure future in this group of countries. Comparing the first MIPEX of 2014 with the last one, shows that not much has changed in terms of policies for immigrants in Austria. In two of the eight areas in which integration policies are being measured, Austria scores particularly poorly: Political participation and Access to nationality. The following figure depicts Austria's points in a net-like shape, highlighting its narrow range and weak tension.¹⁷¹

¹⁷⁰ Rainer Lukits, *Family Reunification of Third-Country Nationals in Austria* (EMN 2016), 54-55 <<https://www.emn.at/wp-content/uploads/2017/02/FamilyReunification-of-Third-Country-Nationals-in-Austria.pdf>> accessed 27 November 2023.

¹⁷¹ Migrant Integration Policy Index 2020 <<https://www.mipex.eu/what-is-mipex>> accessed 27 November 2023.



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Political participation and Access to nationality for immigrants in Austria is categorized as unfavorable. Immigrants still have no voting rights, and restrictive requirements for obtaining Austrian nationality are in place such as language tests, income requirements, and a citizenship test. Austria does not accept dual nationality, consequently being forced to choose between a prior citizenship or the Austrian one. In the area of Permanent residence, Austria performs halfway favorable, since immigrants experience restrictive conditions when wanting to become permanent residents. They have to fulfill restrictive language and economic requirements. In the area of Family reunification, the MIPEX assessed that Austria has slightly unfavorable conditions for family reunification, having one of the most restrictive policies compared to the other MIPEX countries. The economic resources required and the strict definition of dependency can pose an obstacle for family reunification. Further, there is not enough support for non-EU immigrants that help them fulfill the required standards.

¹⁷² Migrant Integration Policy Index 2020 <<https://www.mipex.eu/what-is-mipex>> accessed 27 November 2023.

The areas in which Austria scores more points are Labor market mobility, Education, Health, and Anti-discrimination. Immigrants who hold a permanent residents permit and family reunion permits enjoy the same access to employment as nationals. There are some limitations when it comes to work in the public sector, which is not equally accessible to immigrants as to Austrians, as well as self-employment is not permitted to all immigrants, as discussed above. There are measures in place to support the labor market mobility of immigrants in Austria, but EU citizens and Austrians have more opportunities for education and training than non EU-immigrants. In the area of Education, Austria positively allows all migrant children access to compulsory education. However, Austrian teachers are not trained enough to teach in multilingual and diverse classrooms. A strong area for Austria on the MIPEX, is the area of Health. Austria is among the top, when it comes to granting legal immigrants healthcare benefits. The healthcare system is accessible for legal migrants under the same conditions as for Austrian citizens. Lastly, the area of Anti-discrimination is categorized as halfway favorable in Austria. Most forms of discrimination are prohibited in Austria. The weak point is the equality bodies, however, who do not have judicial power and thus start proceedings on behalf of a victim.¹⁷³

The areas of integration policy that the MIPEX measures cover some of the same fields that are discussed in the NAPI. Education, Health and Labour Market Mobility are their own fields of action in the NAPI. Anti-discrimination, however, is not a separate field and only marginally mentioned, while it is a separate area in the MIPEX. Permanent residence, political participation, access to nationality, family reunion are completely left aside in the NAPI. Thus it comes it can be argued that those areas that Austria does not discuss and places a focus on in the NAPI, are the ones with the relatively lowest scores on the MIPEX.

¹⁷³ Ibid.

Conclusion

In conclusion, it can be asserted that there are numerous human rights relevant in the integration process of immigrants. Many human rights were identified as relevant for immigrants' integration in a host country. Especially, non-discrimination and socio-economic rights such as the right to work, to education, or the right to housing are of importance. While the right not to be discriminated against is more accepted on both the international and the national level, guaranteeing socio-economic rights to third-country nationals is more complex. There seems to be further divergences between what is stipulated in the UN conventions and what is practiced by states. The ICCPR and ICESCR do not allow for discrimination based on nationality or residence status. If states were to strictly adhere to UN terms and approaches, the legitimacy of integration tests as a precondition to a secure legal status, may be questioned.

Similarly, there are differences between what is of concern on a regional level compared to the national level. The European Court of Human Rights deals with numerous cases impacting the right to respect for private and family life in relation to residency of migrants, while family life and family reunification is not even discussed in the national documents examined in this thesis.

In general, on the international level the importance appears to be in progressively providing immigrants with the same rights as nationals and combatting discrimination. At the national level, however, the prevailing interests appear to be ones that address a peaceful coexistence among the groups, an adaption of values by immigrants and a respect for the rule of law. Austria's approach is focused on addressing and minimizing cultural differences with the aim of achieving a successful integration process of immigrants. However, another important aspect that would facilitate integration, that is the right to participate fully in the larger society, appears to be marginalized in Austria's integration strategy.

While it can be generally considered positive that Austria's engagement with the topic of integration increased in the last thirty years, international parameters such as the MIPEX show that Austria is still lagging behind in truly providing all the opportunities immigrants need to participate equally in society. In a recent study on integration by the Austrian Federal Chancellery published in 2023, the Minister of Integration points out to the consequences that isolation and segregation can have for immigrants, emphasizing that in the worst case it can

lead to radicalization.¹⁷⁴ Thus for achieving successful integration, host countries have to start by being honest about its meaning: multiculturalism. Furthermore, it is crucial that integration policies exist that are inclusive and make immigrants feel welcome, so that they can progressively identify as being part of the new culture. Hopefully, human rights can serve as a guiding light in this complex endeavor of integration.

¹⁷⁴ Bundeskanzleramt, 'Gesellschaftlicher Zusammenhalt und Segregation - Eine Bestandsaufnahme zu Integration und Desintegration in Österreich', 4-5.

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Abstract

As the number of people migrating and seeking refuge is expected to increase in the coming years, the demands on host countries to effectively integrate these newcomers into society will consequently rise. This thesis aims to define integration and identify both international and national regulations and guidelines that either uphold or challenge human rights standards in the migrant integration process. At first, the study discusses international standards, analyzing the approaches of the UN monitoring bodies, the Council of Europe, and the European Union towards migrant integration. Subsequently, it provides a national perspective on integration, focusing on Austria, and examines Austria's obligations to respect, protect, and fulfill the human rights of immigrants.

Abstrakt

Die Zahl der Menschen, die migrieren und Zuflucht suchen, wird in den kommenden Jahren voraussichtlich steigen, und damit werden die Anforderungen an die Aufnahmeländer, diese Neuankömmlinge wirksam in die Gesellschaft zu integrieren, folglich zunehmen. Das Ziel dieser Masterarbeit ist es, den Begriff der Integration zu definieren und sowohl internationale als auch nationale Regelungen und Richtlinien zu identifizieren, die Menschenrechtsstandards im Integrationsprozess von Migranten entweder aufrechterhalten oder in Frage stellen. Zunächst werden in der Studie internationale Standards erörtert und die Ansätze ausgewählter UN-Überwachungsorgane, des Europarats und der Europäischen Union zur Integration von Migranten analysiert. Anschließend wird die Integration aus einer nationalen Perspektive betrachtet, wobei der Schwerpunkt auf Österreich liegt. Dabei wird Österreichs Herangehensweise untersucht und verglichen, inwiefern Österreich die Empfehlungen und Standpunkte der internationalen Menschenrechtsorgane umsetzt und erfüllt.